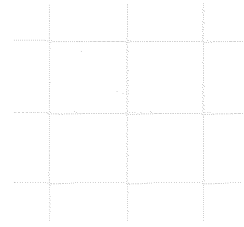


To: Morgan, James[Morgan.James@epa.gov]
From: Cherry, Andrew
Sent: Wed 5/3/2017 6:32:10 PM
Subject: FW: FYI -- WOTUS2, step 1 proposal started OMB review yesterday



FYI – and as I said Donna is the contact to get involved.

Andrew Cherry

Attorney - Advisor

United States Environmental Protection Agency

OECA - OCE - Water Enforcement Division

WJC South, Room 4119A (Mail Code 2243-A))

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-2589 (FAX 202-564-0024)

From: Wehling, Carrie

Sent: Wednesday, May 03, 2017 1:00 PM

To: Adams, Margery <adams.margery@epa.gov>; Beveridge, Laura <Beveridge.Laura@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Clovis, Debora <Clovis.Debora@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>; Denawa, Mai <Denawa.Mai@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Fischer, Lauren <Fischer.Lauren@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Kao, Jessica <Kao.Jessica@epa.gov>; Kermish, Laurie <Kermish.Laurie@epa.gov>; Klassman, Debra <klassman.debra@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Kopf, Jeff <Kopf.Jeff@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Lazos, Pamela <Lazos.Pamela@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>; Mairs, Stephanie <Mairs.Stephanie@epa.gov>; Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>;

Mikalian, Charles <mikalian.charles@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>; Muehlberger, Christopher <muehlberger.christopher@epa.gov>; Muller, Sheldon <Muller.Sheldon@epa.gov>; Murdock, Russell <Murdock.Russell@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Pallesen, Reginald A. <pallesen.reginald@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Perkins, Erin <Perkins.Erin@epa.gov>; Przyborski, Jay <Przyborski.Jay@epa.gov>; Rucki, Thomas <Rucki.Thomas@epa.gov>; Saporita, Chris <Saporita.Chris@epa.gov>; Schefski, Melissa <Schefski.Melissa@epa.gov>; Schwartz, Paul <Schwartz.Paul@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Silver, Wendy <Silver.Wendy@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Trevino, Jeffery <trevino.jeffery@epa.gov>; Vinch, James <Vinch.James@epa.gov>; Volk, Everett <volk.everett@epa.gov>; VonVacano, Marcela <VonVacano.Marcela@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wester, Barbara <wester.barbara@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>
Subject: FYI -- WOTUS2, step 1 proposal started OMB review yesterday

First Trump EPA Rule For OMB Review Would Repeal Obama CWA Policy

May 03, 2017

EPA has sent its first new proposed rule for mandatory White House Office of Management & Budget (OMB) policy review since the Trump administration began, seeking approval of a regulation that would repeal the Obama-era Clean Water Act (CWA) jurisdiction rule as the first step in the process of rewriting the policy to narrow the water law's reach.

According to OMB's website, EPA submitted the proposed rule, "Definition of 'Waters of the United States' -- Recodification of Preexisting Rules," on May 2. The usual deadline for OMB review is 90 days, but that target is non-binding and in practice the process can take more or less time. Although the Trump EPA withdrew several pending Obama EPA rules from OMB once it took office, this is the first rule it has sent for OMB approval.

The website says the rule is not "economically significant," meaning it could avoid hurdles posed by the administration's order for agencies to designate two existing rules for repeal in order to make way for a new policy. If a new rule is deemed "economically significant," it is subject to the "2-for-1" requirement.

OMB's recent guidance on implementing the order has been seen underscoring that the requirement poses a major hurdle to crafting new rules not explicitly required by statute -- underscoring the importance of exempting rules like the

CWA jurisdiction policy that EPA is seeking to quickly issue to comply with President Donald Trump's executive order requiring it to repeal or revise the underlying rule.

While EPA has not made a specific announcement about the CWA proposal sent for OMB review, the title of the proposed rulemaking fits with EPA's vow -- announced publicly at [an April 19 meeting](#) with state regulatory groups -- to repeal and replace the Obama administration's CWA rule in two steps.

The first step is to scrap the Obama-era rule and reinstate policies that were in place before that rule was finalized.

The "preexisting rules" in the pending proposal's title refer to CWA jurisdiction policies that the 2015 rule supplanted -- most prominently a 1986 rulemaking, the most recent formal regulation issued on the subject until the Obama administration's policy, and 2008 guidance interpreting the effects of the Supreme Court's fractured CWA decision, *Rapanos v. United States*.

Those policies are still in force nationwide as implementation of the Obama-era rule has been stayed by the U.S. Court of Appeals for the 6th Circuit, but a formal repeal would make that state of affairs permanent.

Rule Repeal

One attendee of the April 19 meeting told *Inside EPA* at the time that the now-pending rule is not expected to codify the 2008 guide. Instead, it will aim to formally revive the policy *status quo* that existed before the Obama administration issued its rule.

The goal of the forthcoming rulemaking is to "make clear where we stand now, and what policies are going to be in place until there's a new rule," that source said.

Repealing the Obama-era rule would avoid any chance that an appellate court's nationwide stay could be dissolved -- which could happen as soon as the end of 2017 if the Supreme Court rules in [the pending case](#) *National Association of Manufacturers (NAM) v. Department of Defense, et al.*, that appellate courts never had authority to hear suits over the regulation at all.

Critics of the 2015 rule, including GOP legislators, have urged the Trump administration to move quickly on a repeal rulemaking in order to avoid that scenario.

Most recently, legislators and witnesses at an [April 26 hearing](#) of the Senate

Environment & Public Works Committee argued that the Obama-era rule goes far beyond the scientific report on waters' connectivity that EPA crafted to justify it, with one member of the Scientific Advisory Board (SAB) panel that reviewed the report agreeing with those claims.

The rule submitted to OMB is not expected to touch on the CWA jurisdiction policy that EPA ultimately plans to implement to comply with Trump's Feb. 28 executive order.

Second Step

Instead, the second step in the repeal and replace process for the CWA policy will be for the agency to craft a replacement rule that uses a narrower test for determining jurisdiction crafted by the late Supreme Court Justice Antonin Scalia rather than the broader test from Justice Anthony Kennedy that the Obama EPA and Army Corps of Engineers used in their joint rulemaking.

Scalia's test from the high court's 4-4-1 *Rapanos* ruling says CWA jurisdiction should be limited to "relatively permanent" waters that share a "continuous surface connection" with navigable waters. Since the *Rapanos* ruling it has competed with the broader test crafted by Justice Anthony Kennedy that says any waterbodies sharing a "significant nexus" with navigable waters should be considered jurisdictional.

While the Obama-era rule was based on the "significant nexus" test, repealing that regulation will not formally abandon Kennedy's standard, since the 2008 guidance says any water that satisfies either Kennedy or Scalia's opinions is protected by the CWA. Thus, a court battle over the repeal rule is unlikely to touch on whether it is lawful to apply only the Scalia test -- instead, that question is expected to be at the heart of challenges to the eventual replacement rule.

But at least six state attorneys general, as well as environmental groups, have already vowed to sue over any action to rescind or replace the current CWA rule, signaling that any final rule on the subject will start a fresh court battle over whether the Trump administration has a reasonable basis for its repeal.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Cherry, Andrew

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Cherry, Andrew

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom Nonresponsive Conference Code/ Ex. 6
1290#

Importance: Normal

Subject: Declined: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

From: Cherry, Andrew

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: Cherry, Andrew
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Declined: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: FW: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Jeff – FYI – I may call in for this meeting.

-----Original Appointment-----

From: Downing, Donna
Sent: Thursday, March 30, 2017 5:11 PM
To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US); Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn
Cc: Ludwig-Monty, Sarah
Subject: WOTUS-2 interagency meeting
When: Tuesday, April 04, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

Agenda will precede the meeting.

The time's moved from our usual 11am in response to requests.

I've reserved a room at EPA, but the meeting could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Cherry, Andrew
Location: 3204WJC South
Importance: Normal
Subject: FW: Pre-Brief for WOTUS Meeting
Start Date/Time: Mon 3/27/2017 7:00:00 PM
End Date/Time: Mon 3/27/2017 7:30:00 PM

Jeff - -FYI – you should plan to attend this meeting today.

-----Original Appointment-----

From: Cozad, David
Sent: Thursday, March 23, 2017 10:05 AM
To: Cozad, David; Shinkman, Susan; Starfield, Lawrence; Pollins, Mark; Theis, Joseph; Cherry, Andrew; Kelley, Rosemarie
Cc: Bahk, Benjamin
Subject: Pre-Brief for WOTUS Meeting
When: Monday, March 27, 2017 3:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3204WJC South

From: Cherry, Andrew
Location: 3204WJC South
Importance: Normal
Subject: Accepted: Pre-Brief for WOTUS Meeting
Start Date/Time: Mon 3/27/2017 7:00:00 PM
End Date/Time: Mon 3/27/2017 7:30:00 PM

From: Cherry, Andrew
Location: DCRoomWest7129/DC-CCW-OWOW Telecom available
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 3/21/2017 3:00:00 PM
End Date/Time: Tue 3/21/2017 4:00:00 PM

From: Cherry, Andrew
Location: 3233 WJCE
Importance: Normal
Subject: FW: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Wed 3/8/2017 4:00:00 PM
End Date/Time: Wed 3/8/2017 4:45:00 PM

Mark – here is the invite for today’s meeting.

-----Original Appointment-----

From: Penman, Crystal **On Behalf Of** Shapiro, Mike

Sent: Tuesday, March 07, 2017 9:39 AM

To: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter

Cc: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Dravis, Samantha; Theis, Joseph; Bahk, Benjamin; Pollins, Mark

Subject: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**

When: Wednesday, March 08, 2017 11:00 AM-11:45 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE

From: Cherry, Andrew
Location: 3233 WJCE
Importance: Normal
Subject: Accepted: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**
Start Date/Time: Wed 1/25/2017 3:00:00 PM
End Date/Time: Wed 1/25/2017 3:45:00 PM

From: Cherry, Andrew

Location: 3233 WJCE

Importance: Normal

Subject: Accepted: Clean Water Rule Call in

Nonresponsive Conference Code/ Ex. 6

Start Date/Time: Wed 3/8/2017 4:00:00 PM

End Date/Time: Wed 3/8/2017 4:45:00 PM

From: Kwok, Rose
Location: 866-299-9141, code 694 590 83
Importance: Normal
Subject: Confirmed: Region 8 RTOC WOTUS Discussion
Start Date/Time: Thur 6/22/2017 4:30:00 PM
End Date/Time: Thur 6/22/2017 5:30:00 PM
WOTUS2 tribal info and consultation - 6-22-2017.pptx
06-22-17 TribalRunofShow.docx

FYI – I’ve updated the tribal run of show document

R8 RTOC would like info/an update on WOTUS at their RTOC meeting.

Call in is Nonresponsive Conference Code/ Ex. 6 I have reserved the Potomac Conference Room, 7301 WJC West.

We’ll be on the agenda on **Thursday, 6/22 at 12:30 – 1:15 PM EDT**. We will have 45 minutes but may need to be flexible (hence I’ve set the invitation for the full hour). We would conference call into the hotel meeting room and would need to provide the PPT slides to participants in advance of the meeting (attached – I sent Region 8 a PDF and clean version of the PPT). I’ve also attached the draft run of show.

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/13/2017 4:00:00 PM
End Date/Time: Tue 6/13/2017 5:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7343/DC-CCW-OWOW
Importance: Normal
Subject: 7343 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/20/2017 5:00:00 PM
End Date/Time: Tue 6/20/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: 7129 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: 7114M WOTUS Interagency Room Reservation
Start Date/Time: Tue 7/18/2017 5:00:00 PM
End Date/Time: Tue 7/18/2017 6:00:00 PM

From: Downing, Donna
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS-2 staffing discussion pre-meeting
Start Date/Time: Mon 6/12/2017 3:30:00 PM
End Date/Time: Mon 6/12/2017 4:00:00 PM

Hi Damaris –

Thanks for adding additional communications and consultation/coordination details to the draft staffing plan. I'll be in the office shortly after 11 and so am scheduling a short pre-meeting discussion with the two of us, with Rose be an optional since she'll be newly back in the office and thus her head might not be as full of potential staffing issues as ours are at present.

I'll be sending a third draft staffing plan shortly. Draft three will differ from the second draft in a bit of updated detail outside of the communication sections, as well as will reflect a bit of restructuring of the c

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Anyway, that's my goal and the soon-to-be-sent third draft staffing plan is an attempt to do that. Let's discuss at 11:30 whether that is a good goal, whether the third draft works to help bring such a goal about, and if there's a better approach. Stay tuned!

Hope you had a good weekend. I spent it

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Donna

From: Hurlid, Kathy
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: Follow-up WOTUS Federalism call with WSWC
Start Date/Time: Fri 6/16/2017 3:00:00 PM
End Date/Time: Fri 6/16/2017 4:00:00 PM

Conference ID: Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number: Nonresponsive Conference Code/ Ex. 6

This will be a call only.

Agenda –

- 1) Mindy Eisenberg and Cindy Barger will open and welcome WSWC.
- 2) Opportunity for Tony Willard with WSWC to say a few words
- 3) Then we will move into Q&A.
- 4) Closing is a thank you by Mindy and Cindy

This will be a discussion only, as they want an opportunity for follow-up.

Leaderview website: <http://www.leaderview.com>
Web PIN: 0882

From: Kwok, Rose

Location: Brothertown Conference Room (at Conference) or

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: NCAI Mid-Year Conference: Tribal Listening Session on WOTUS

Start Date/Time: Wed 6/14/2017 4:00:00 PM

End Date/Time: Wed 6/14/2017 5:00:00 PM

14June2017 TribalRunofShow.docx

WOTUS2 tribal info and consultation - 6-14-2017.pptx

Cindy and I will be attending in person, but I'm setting up a phone line for folks to call in who are interested in calling in. The call in is

Nonresponsive Conference Code/ Ex. 6

Karen can you help take notes?

I've added materials for the meeting to Sharepoint:

Nonresponsive Internal URL/ Ex. 6

and have attached a few of the documents to the invite. Cindy, give you the Army opening remarks on the Run of Show since you'll be there in person. We'll have a sign-in sheet and some hard copies of the presentation.

From: Goodin, John
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below
Importance: Normal
Subject: WOTUS-2: Federalism Webinar with ASFM & IOGCC
Start Date/Time: Wed 6/7/2017 6:00:00 PM
End Date/Time: Wed 6/7/2017 7:00:00 PM
[WOTUSIOGCCandASFMinvite.docx](#)
[WOTUSIOGCCandASFPMPPT.PPTX](#)

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in number **Nonresponsive Conference Code/ Ex. 6**

The leader line is **Nonresponsive Conference Code/ Ex. 6** You must call into the leader line to have speaking privileges (if you call into the participant line, tell the operator when you speak to her that you should have speaking privileges).

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

From: Kwok, Rose
Location: [Nonresponsive Conference Code/ Ex. 6] and webinar link; Pacific Conference Room
Importance: Normal
Subject: Confirmed: Region 4 RTOC on WOTUS
Start Date/Time: Wed 6/7/2017 3:00:00 PM
End Date/Time: Wed 6/7/2017 4:00:00 PM
WOTUS2 tribal info and consultation - 6-7-2017.pptx
06-07-17 TribalRunofShow.docx
WOTUS2 tribal info and consultation - 6-7-2017.pdf

Call-in: [Nonresponsive Conference Code/ Ex. 6]

Link to webinar with OW - [Nonresponsive Internal URL/ Ex. 6]

Room in DC: I've reserved the Pacific Conference Room, 7114-M WJC West

Region 4 has confirmed that we will have an opportunity to present on WOTUS at their next RTOC call. I will still be on travel Donna will be giving the presentation. Region 4 has given us most of the hour to present. Attached are the materials for the call. I'll send the PDF version to the Region 4 tribal contact in case she wants to distribute the presentation after the call.

Thanks, all.

From: Kwok, Rose
Location: [Nonresponsive Conference Code/ Ex. 6] or 7114M WJC West (Pacific Conference Room)
Importance: Normal
Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
Start Date/Time: Wed 5/31/2017 4:00:00 PM
End Date/Time: Wed 5/31/2017 5:00:00 PM
WOTUS2 tribal info and consultation - 5-31-2017.pdf

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: [Nonresponsive Conference Code/ Ex. 6]

In DC, I've reserved the Pacific Conference Room (7114-M West)

From: Eisenberg, Mindy
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS website
Start Date/Time: Tue 5/9/2017 3:00:00 PM
End Date/Time: Tue 5/9/2017 3:45:00 PM

Purpose: walk through CWR website and mock-up of new WOTUS site.

Please forward to others as appropriate.

From: Shapiro, Mike
Location: 3233 WJCE Call in Nonresponsive Internal URL/ Ex. 6
Importance: Normal
Subject: Proposed Outreach Strategy for WOTUS Rulemaking
Start Date/Time: Mon 5/1/2017 2:15:00 PM
End Date/Time: Mon 5/1/2017 3:00:00 PM
[OW Meeting Request Form outreach.docx](#)
[WOTUS2 outreach overview 4-28.docx](#)

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Room for WDD call (in case we don't fit in John's office)
Start Date/Time: Thur 4/20/2017 7:30:00 PM
End Date/Time: Thur 4/20/2017 8:30:00 PM
WDD Call - 2017 April 20 - WOTUS-2 Update v2.docx

I know John and Mindy are attending, but think it could be useful for Damaris and Rose to hear the conversation ... if they have the time available. I'll also attach the 1-pager so we all have the final version.

Donna

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Listening room for staff interested in federalism discussions on WOTUS-2
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

Many folks asked for a room from which to listen in ... here's a room reserved for that purpose.

Donna

From: Shapiro, Mike
Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort
Importance: Normal
Subject: FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call
Nonresponsive Conference Code/ Ex. 6
Start Date/Time: Tue 4/18/2017 1:00:00 PM
End Date/Time: Tue 4/18/2017 1:45:00 PM
[OW Meeting Request Form econ.docx](#)
[Proposed Framework for Economic Analysis for New Two-Step WOTUS.clean.docx](#)
[Proposed Framework for Economic Analysis one-pager.clean.docx](#)

-----Original Appointment-----

From: Shapiro, Mike
Sent: Thursday, April 13, 2017 2:04 PM
To: Shapiro, Mike; Greenwalt, Sarah; Dravis, Samantha; Nickerson, William; McGartland, Al; Fotouhi, David; Neugeboren, Steven; Kupchan, Simma; Wehling, Carrie; jennifer.a.moyer@usace.army.mil; stacey.m.jensen@usace.army.mil; David.F.Dale@usace.army.mil; Cindy Barger; douglas.w.lamont2.civ@mail.mil; craig.r.schmauder.civ@mail.mil; Eisenberg, Mindy
Cc: Peck, Gregory; Campbell, Ann; Minoli, Kevin; Nandi, Romell; Washington, Valerie; Hewitt, Julie; Goodin, John; Best-Wong, Benita; Penman, Crystal
Subject: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS Call in
Nonresponsive Conference Code/ Ex. 6
When: Tuesday, April 18, 2017 9:00 AM-9:45 AM (UTC-05:00) Eastern Time (US & Canada).
Where: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call 2025645700 for escort

From: Shapiro, Mike
Location: 3219A WJCE
Importance: Normal
Subject: FW: Pre-brief WOTUS Federalism Meeting
Start Date/Time: Mon 4/17/2017 7:00:00 PM
End Date/Time: Mon 4/17/2017 7:30:00 PM

-----Original Appointment-----

From: Shapiro, Mike
Sent: Monday, April 17, 2017 9:14 AM
To: Shapiro, Mike; Goodin, John; Eisenberg, Mindy; Christensen, Damaris; Lousberg, Macara; Best-Wong, Benita
Cc: Neugeboren, Steven; Penman, Crystal
Subject: Pre-brief WOTUS Federalism Meeting
When: Monday, April 17, 2017 3:00 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3219A WJCE

From: Shapiro, Mike
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: WOTUS Schedule
Start Date/Time: Wed 4/12/2017 9:00:00 PM
End Date/Time: Wed 4/12/2017 9:45:00 PM
DRAFT schedule considerations.docx
ATT00001.htm
schedule 4-12.xlsx
ATT00002.htm

Poc Ann Campbell

From: Downing, Donna
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom Nonresponsive Conference Code/ Ex. 6



Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting). Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW Telecom:

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Initial meeting of informal staff WOTUS-2 workgroup

Start Date/Time: Thur 4/6/2017 5:00:00 PM

End Date/Time: Thur 4/6/2017 6:00:00 PM

Informal WOTUS Workgroup participant list.docx

ADDING CALL-IN INFORMATION:

Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.”

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

This meeting is the kick-off. Agenda includes:

-
-
-

Deliberative Process / Ex. 5

Please note that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Similarly, this workgroup is

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Do let me know if you would prefer not to be on the workgroup.

Please feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

PS -- I'm attaching a draft list of workgroup participants. I'll update as it evolves.

From: Hewitt, Julie

Location: DCRoomWest7301/DC-CCW-OWOW and Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Weekly WOTUS Econ

Start Date/Time: Thur 4/6/2017 3:00:00 PM

End Date/Time: Thur 4/6/2017 4:00:00 PM

Nonresponsive Internal URL/ Ex. 6

Region 8 RTOC
June 22, 2017, 12:30-1:15 PM Eastern
RUN OF SHOW

Conference Number: Nonresponsive Conference Code/ Ex. 6
Nonresponsive Conference Code/ Ex. 6 3

Potomac Conference Room (7301 WJC West)

We have sent the slides to Region 8 in advance for distribution to the RTOC.

12:30 - 12:35 PM Introductions

Rose will lead very quick introductions/roll call of EPA/Army/Corps folks on the phone (including the Regional wetlands staff)

12:35- 12:38 PM Opening Remarks

Mike or Rose -

Thank you for allowing us to speak during your RTOC meeting today about the forthcoming rulemaking to revise the definition of “waters of the United States.” During this call, we will inform you regarding the actions the agencies are undertaking in response to the February 28, 2017, Presidential Executive Order.

Deliberative Process / Ex. 5

Chip Smith [Chip will be lead. Cindy to back him up in the event there are any last minute issues/errors]

Thank you for joining us. Together with the Army Corps of Engineers, we are committed to working closely with and supporting the EPA on these rulemakings.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We welcome your feedback today and in the upcoming months.

12:38 – 12:50 PM Presentation of WOTUS2

Rose launches into Powerpoint.

12:50 - 1:10 PM Q & A, Discussion statements from invitees

Rose facilitates discussion (slide 12), reminds speakers to introduce themselves and their affiliation (so we can get down their names)

1:10 – 1:15 PM Next steps

Rose discusses timeline for next steps, contact information, and website (Slides 13-15)

Mike or Rose closes the WOTUS portion of the meeting

Thanks for your advice and discussions today. The tribal consultation period ended on June 20,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again for your time and interest.

Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

Tolowa Dee-ni' Nation - May 31, 2017

Agenda

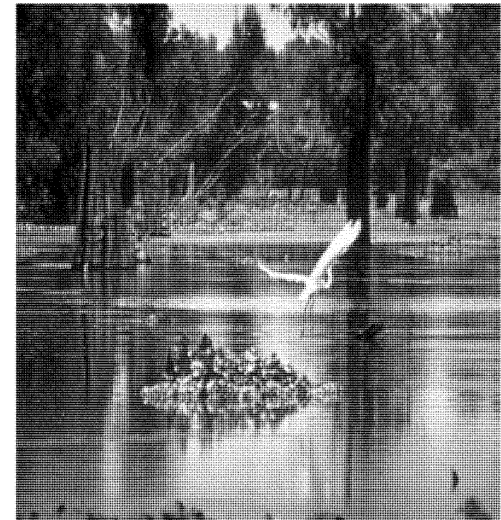
- * Call in: **Nonresponsive Conference Code/ Ex. 6**
- * Introductions
- * Presentation on “Waters of the United States” Proposed Rulemaking
- * Questions and Discussion
- * Next Steps

Why Are We Here?

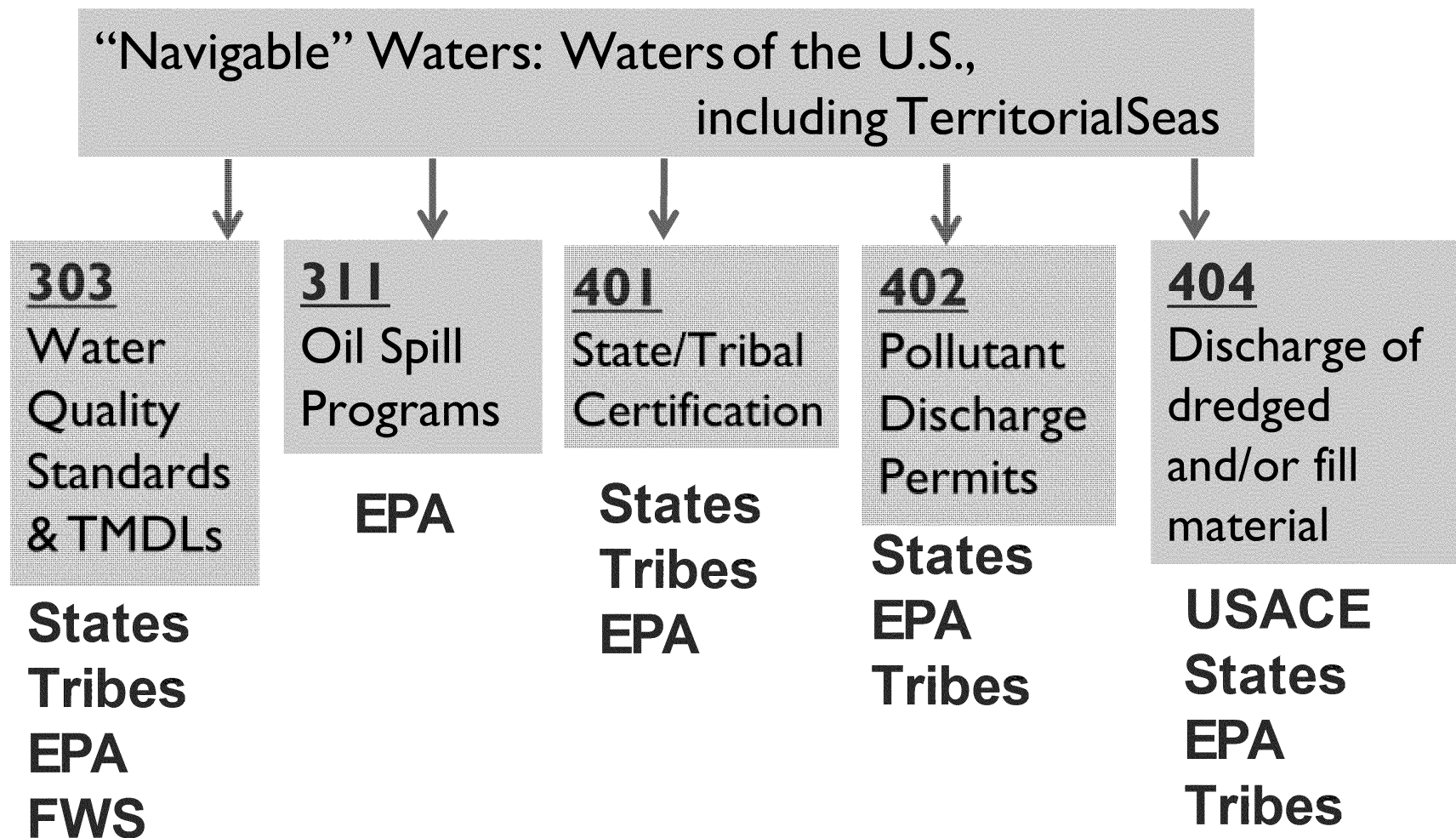
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
- * The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.
- * <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
 2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
- * The agencies are aware that the scope of CWA jurisdiction is of intense interest to many Tribes and stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.
- * In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
- * To provide greater certainty, the agencies will move to reinstate the pre-existing regulations and guidance and to withdraw the 2015 Clean Water Rule.
- * In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the 2015 Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.
- * The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

- * Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes **relatively permanent waters** and wetlands with a **continuous surface connection** to relatively permanent waters.
- * The agencies are consulting with Tribes and with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current
practice:
seasonal
flow = about
3 months
(varies
regionally)

Perennial plus
streams with
another measure
of flow

Use
appropriate,
implementable
metrics, e.g.,
frequency of
flow,
intersecting
water table

Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
- * How do you think a reduction in Clean Water Act jurisdiction might affect your Tribalwater programs, such as 401 water quality certification or water quality standards?
- * How might a change in definition and reduction in federal permitting affect other Tribalprograms and interests?
- * If the definition changes, what would be the best way to “get the word out” and provide training and information to Tribes?

Next Steps

- * **June 14** – National Congress of the American Indians Mid Year Conference
- * **June 20** – Tribal consultation period concludes
 - * Comments can be submitted to CWAwotus@epa.gov and copied to Gude.Karen@epa.gov
- * **August 16** – Tribal Lands & Environment Forum

Contacts

Project Leads

- * Donna Downing (EPA)
 - * (202) 566–2428
 - * CWAwotus@epa.gov
- * Stacey Jensen (Army Corps of Engineers)
 - * (202) 761-5903
 - * USACE_CWA_Rule@usace.army.mil

Tribal Liaison Contacts

- * Karen Gude (EPA)
 - * (202) 564-0831
 - * Gude.karen@epa.gov
- * Chip Smith (Army)
 - * (703) 693-3655



For Additional Information

*** Please visit our new website at:**

*** <https://www.epa.gov/wotus-rule>**



Dear Intergovernmental Association Colleague:

I am writing to invite you and your members to engage with the Environmental Protection Agency, the Department of Army and the Army Corps of Engineers on the Clean Water Act “Waters of the U.S.” rulemaking.

The February 28th Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the ‘Waters of the United States’ Rule” directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious manner, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and re-codify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of “waters of the U.S.” consistent with direction in the February 28, 2017 E.O.

EPA initiated federalism consultation on April 19 and tribal consultation on April 20, regarding the new definition that will be developed under the second rulemaking. These consultation periods end June 19 and 20, respectively.

While the agencies are reviewing these pre-proposal comments, we would also like to hear from your organizations’ members. We are planning a listening session for the Interstate Oil and Gas Compact Commission and the Association of State Floodplain Managers on June 7, 2017, from 2:00 pm to 3:00 pm Eastern Daylight Time. This will be a webinar accessible via

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/ with a call-in number of

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Please let us know if you will be able to attend the webinar by contacting Kathy Hurld in EPA’s Office of Wetlands, Oceans, and Watersheds at hurld.kathy@epa.gov or 202-566-1269, or Hanson.Andrew@epa.gov. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although discussions at these briefings materials will be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.

Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting
Webinar with IOGCC and ASFPM

June 7, 2017
2-3 pm Eastern

Call in Number
WEBINAR URL

Nonresponsive Conference Code/ Ex. 6

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

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<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

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The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments are due to the EPA by June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov.

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

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Definition of “Waters of the U.S.”

Informational Session for Tribes in Consultation and Coordination
Process

NCAI Mid-Year Conference – June 14, 2017

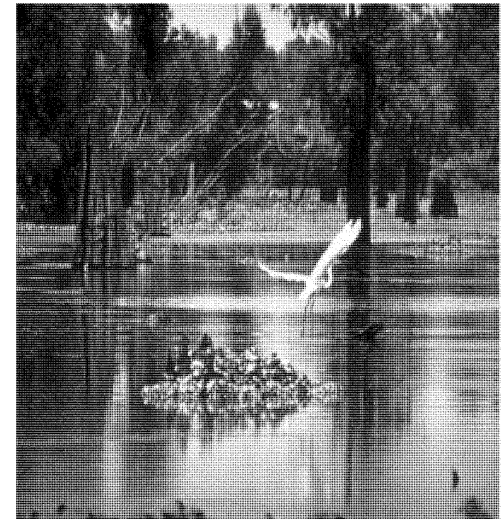
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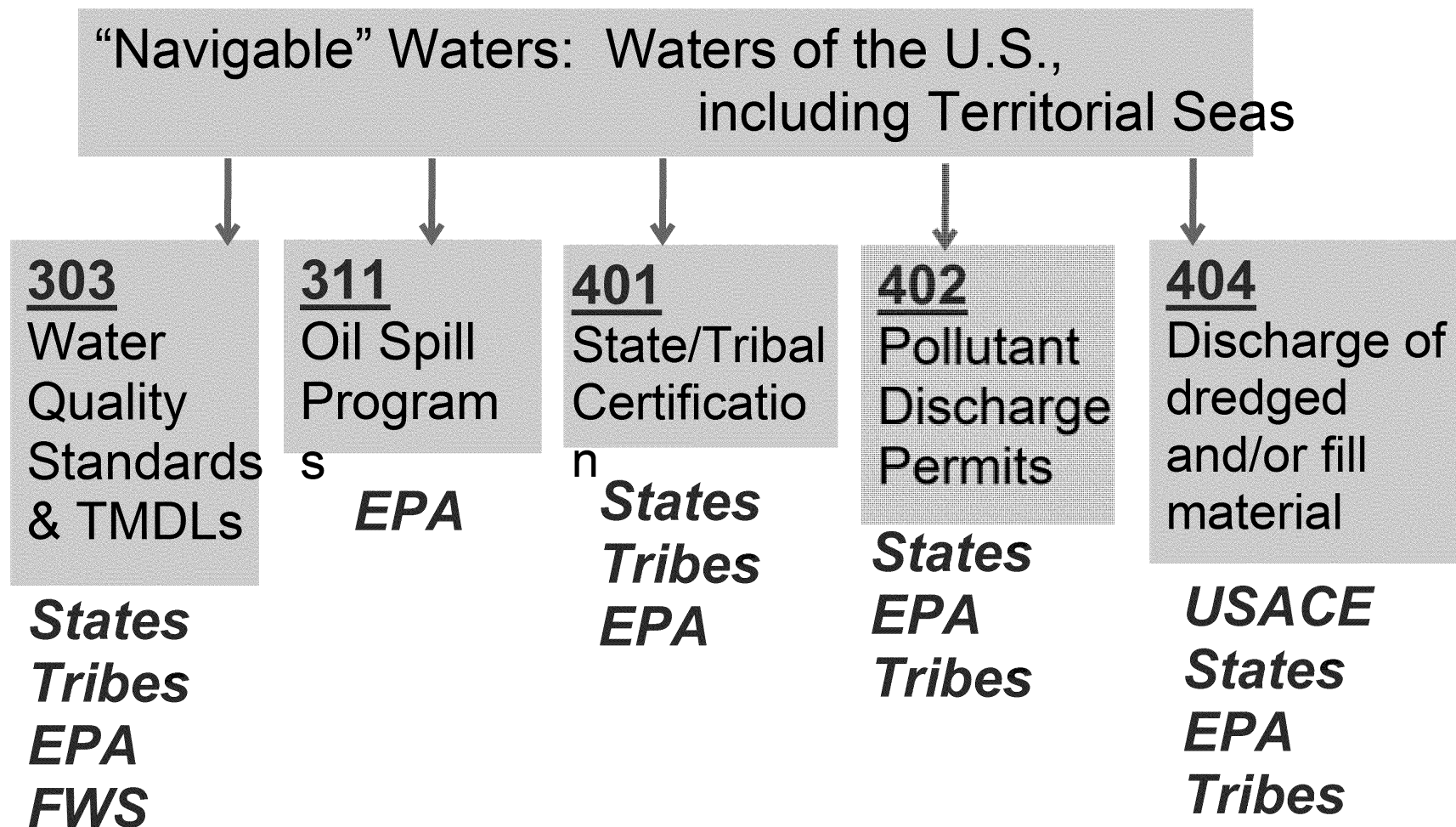


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Two-Step Rulemaking Process

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streams with
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Current
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about 3
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Perennial plus
streams with
another
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Use
appropriate,
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e metrics,
e.g.,
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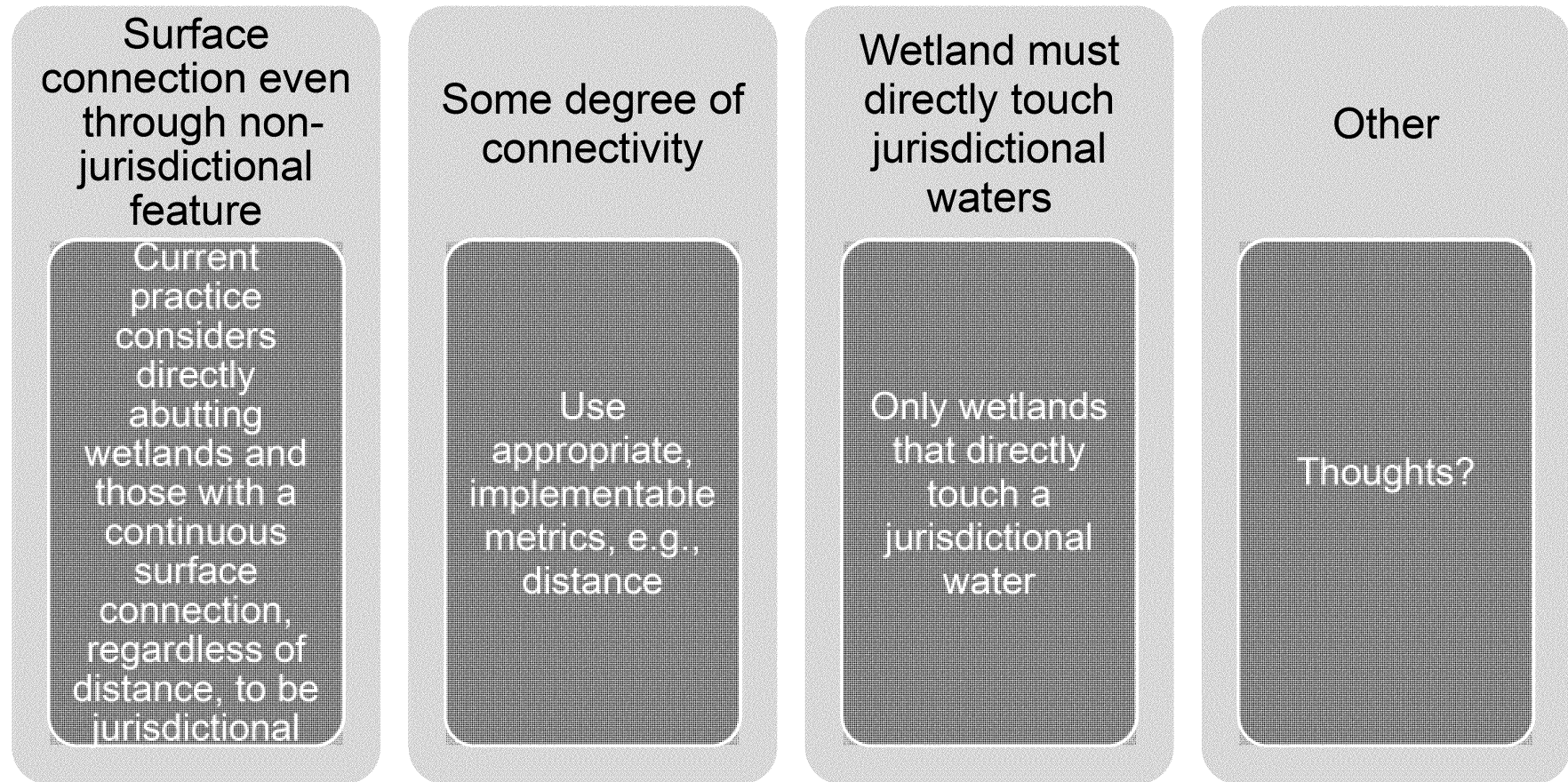
Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts
?

Potential Approaches to Wetlands with a “Continuous Surface Connection”



Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
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Next Steps

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 - * June 22 – Region 8
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- * **June 20** – Tribal consultation period concludes
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 - * Gude.karen@epa.gov
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For Additional Information

* **Please visit our new website at:**

* <https://www.epa.gov/wotus-rule>

Region 4 RTOC
June 7, 2017 at 11 AM
RUN OF SHOW

Conference Number: [Nonresponsive Conference Code/ Ex. 6]
Code: [Nonresponsive Conference Code/ Ex. 6]
Webinar: **Nonresponsive Internal URL/ Ex. 6**
Pacific Conference Room (7114-M WJC West)

R4 will provide most of the hour of their RTOC call to discuss WOTUS. We will present via webinar.

Prior to 11 AM

Brittany will set up and start the webinar, [Nonresponsive Internal URL/ Ex. 6] and will make sure that the phone line is dialed into the conference line.

11:00 - 11:05 AM Introductions

Roll call/welcome will be led by the RTOC Chair. If needed, **Donna** will lead very quick introductions/roll call of EPA/Army/Corps folks on the phone (including the Regional wetlands staff)

11:05- 11:08 AM Opening Remarks

Mindy or Donna -

Deliberative Process / Ex. 5

11:08 – 11:35 AM Presentation of WOTUS2

Donna launches into Powerpoint.

11:35 - 11:55 AM Q & A, Discussion statements from invitees

Donna facilitates discussion (slide 12), reminds speakers to introduce themselves and their affiliation (so we can

get down their names)

11:55 – 12 Next steps

***Donna** discusses timeline for next steps, contact information, and website*

Deliberative Process / Ex. 5

***Mindy or Donna** closes the WOTUS portion of the meeting*

Deliberative Process / Ex. 5

Thanks again for your time and interest.

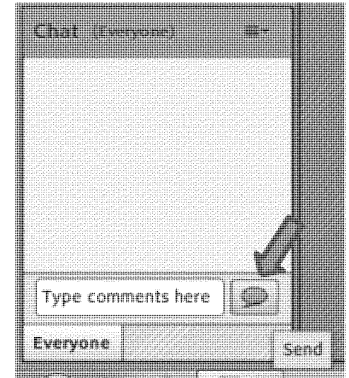
Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

Region 4 RTOC – June 7, 2017

Webinar Logistics

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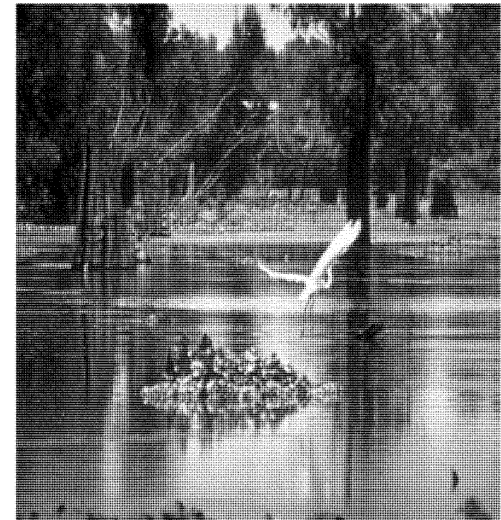


Why Are We Here?

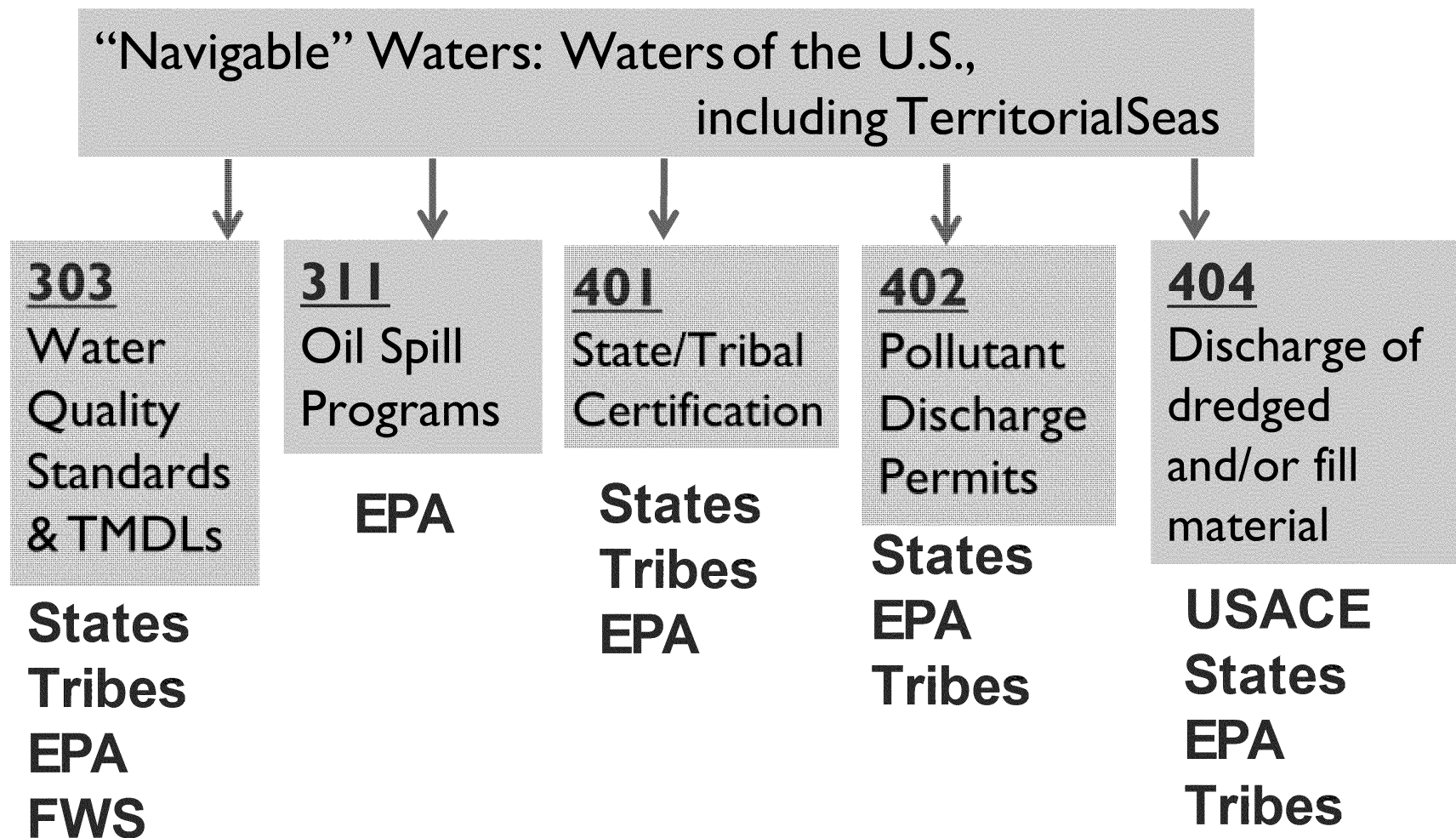
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
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- * <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
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Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
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Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

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Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current
practice:
seasonal
flow = about
3 months
(varies
regionally)

Perennial plus
streams with
another measure
of flow

Use
appropriate,
implementable
metrics, e.g.,
frequency of
flow,
intersecting
water table

Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
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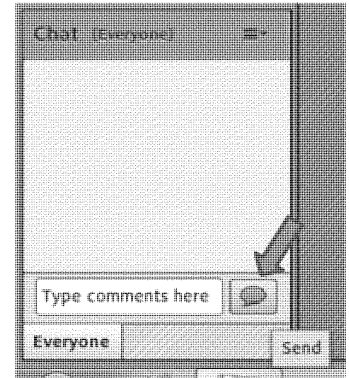
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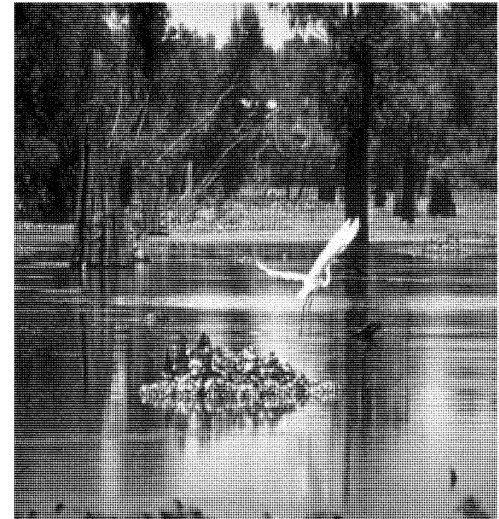
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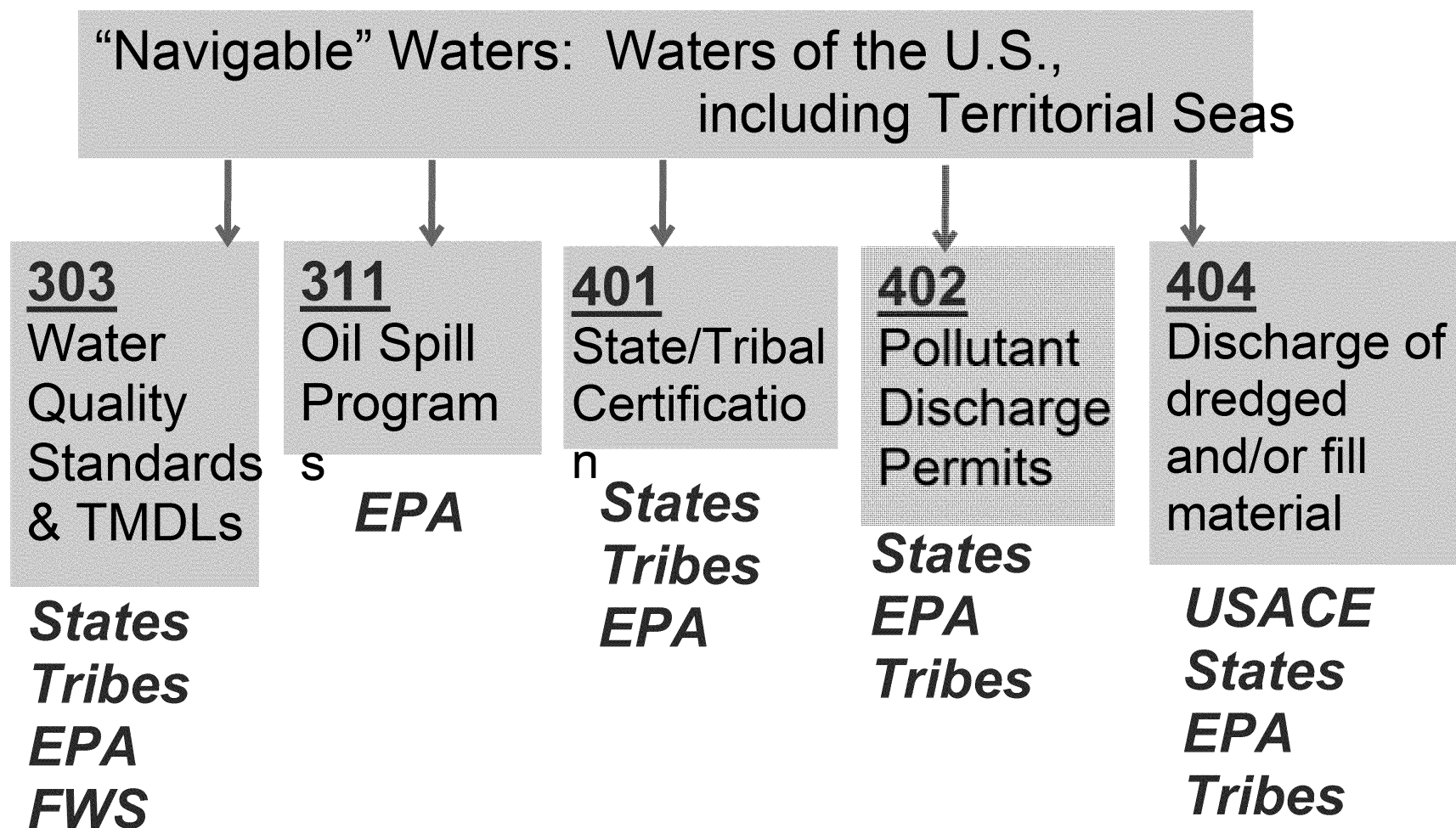


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streams with
“seasonal” flow

Current
practice:
seasonal
flow =
about 3
months
(varies
regionally)

Perennial plus
streams with
another
measure of flow

Use
appropriate,
implementabl
e metrics,
e.g.,
frequency of
flow,
intersecting
water table

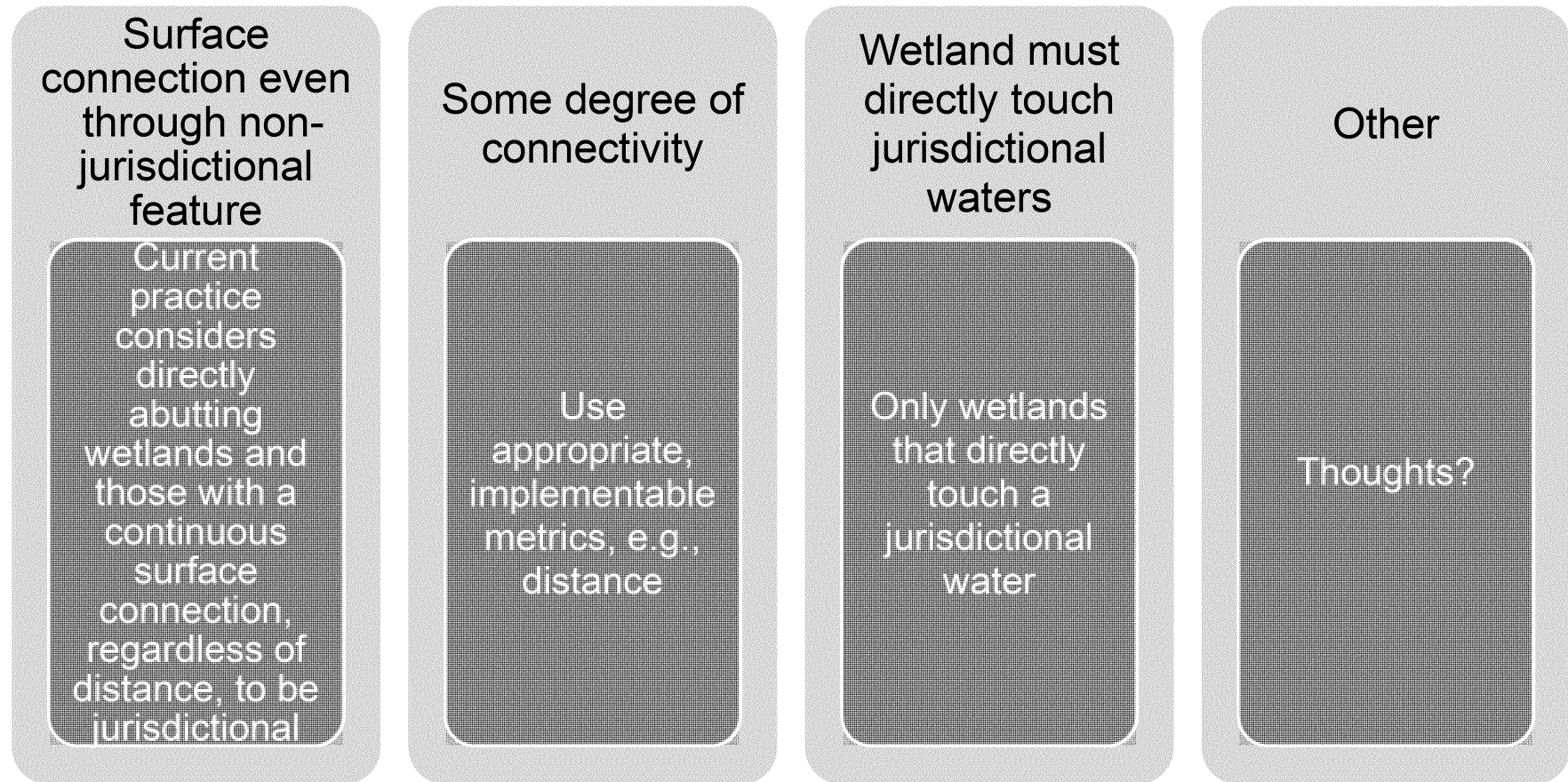
Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts
?

Potential Approaches to Wetlands with a “Continuous Surface Connection”



Questions and Discussion

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To: Downing, Donna[Downing.Donna@epa.gov];
David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Keating, Jim[Keating.Jim@epa.gov];
Frazer, Brian[Frazer.Brian@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg,
Mindy[Eisenberg.Mindy@epa.gov]; Doley, Todd[doley.todd@epa.gov]; Ludwig-Monty, Sarah[ludwig-
monty.sarah@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Hudiburgh,
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Kwok[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett,
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(US)[John.M.Wilson@usace.army.mil]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Flannery-
Keith, Erin[Flannery-Keith.Erin@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov];
Principe, Vanessa[Principe.Vanessa@epa.gov]; Clark, Becki[Clark.Beki@epa.gov]; Jennings,
Kim[Jennings.Kim@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov];
Peterson, Carol[Peterson.Carol@epa.gov]

NEW ROOM -- ROOM WILL BE 3233 3106-C WJCE ~~(same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.~~

Telecom info is: Nonresponsive Conference Code/ Ex. 6

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

To: Downing, Donna[Downing.Donna@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US)[John.M.Wilson@usace.army.mil]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Doley, Todd[doley.todd@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Hudiburgh, Gary[Hudiburgh.Gary@epa.gov]; Principe, Vanessa[Principe.Vanessa@epa.gov]; Clark, Becki[Clark.Becki@epa.gov]; Jennings, Kim[Jennings.Kim@epa.gov]
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Bcc: DCRoomWest7201/DC-CCW-OWOW[DCRoomWest7201@epa.gov]
To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]

ROOM WILL BE 7201, “TILLAMOOK CONFERENCE ROOM” IN EPA WEST (unless Rose or Damaris can find a larger and/or more convenient conference room in the meantime)

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To: Schaefer-Gomez, Julia[Schaefer-Gomez.Julia@epa.gov]

I believe we will be in Room 2369-B in EPA East (WJC East) for our 11am follow-up to the 10pm WOTUS-2 Leadership meeting. OW told me the conference room for our 10am, 3233 EPA East, has somebody else using it at 11am.

-

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Hot Topics Call
Waters of the U.S. Rulemaking
April 20, 2017
2:30-3:30pm Central, 3:30-4:30pm Eastern
Call in number: **Nonresponsive Conference Code/ Ex. 6**

2:00 – 2:10	Roll Call	Regions/HQ Offices
2:10 – 2:30	Background and Presentation	Mindy Eisenberg, Donna Downing
2:30-2:45	Discussion Questions	Mindy Eisenberg/All

BACKGROUND: As part of a two-step process, the Environmental Protection Agency and the Department of the Army, Army Corps of Engineers are developing a proposed rule to rescind the 2015 regulatory definition of “waters of the United States,” and reinstate the regulatory framework that was in place prior to the 2015 rule and is in place now as a result of the current stay by the U.S. Court of Appeals for the Sixth Circuit of the 2015 Rule. The agencies will subsequently propose a rule to revise the definition of waters of the United States consistent with direction in an Executive Order signed on February 28, 2017, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

PURPOSE: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

DISCUSSION QUESTIONS:

- 1)
- 2)
- 3)
- 4)

Deliberative Process / Ex. 5

From: Sachs, Erica
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

I assume there will be a call-in number for this meeting?

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

This meeting is to discuss the latest draft of the WOTUS-2 rule text, which I sent as a separate email.

Nonresponsive Conference Code/ Ex. 6

Donna

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Agenda will precede the meeting.

The time's moved from our usual 11am in response to requests.

I've reserved a room at EPA, but the meeting could be held at the Corps if they prefer.

Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna
Location: 3233 WJCE (OW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting). Telecom info is:

Nonresponsive Conference Code/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Downing, Donna
Location: TBD (hopefully WJCE 3233 but we're checking)
Importance: Normal
Subject: Responding to CWR-Related 10am Meeting Requests
Start Date/Time: Wed 3/22/2017 3:00:00 PM
End Date/Time: Wed 3/22/2017 4:00:00 PM

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Personal Matters / Ex. 6

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency meeting

Start Date/Time: Tue 3/21/2017 3:00:00 PM

End Date/Time: Tue 3/21/2017 4:00:00 PM

Agenda will precede the meeting.

I've reserved a room at EPA, but the meeting could be held at the Corps if they prefer.

Nonresponsive Conference Code/ Ex. 6

Personal Matters / Ex. 6

Donna

From: Downing, Donna
Location: TBD; we'll try to confirm Room 3233 the same room as the leadership meeting
Importance: Normal
Subject: Responding to Clean Water Rule 10am meeting leadership requests
Start Date/Time: Wed 3/15/2017 3:00:00 PM
End Date/Time: Wed 3/15/2017 4:00:00 PM

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See you!

Donna

From: Downing, Donna
Location: At the Corps (room TBD) Telecom:
body of invitation below)
Importance: Normal
Subject: WOTUS-2 interagency team meeting
Start Date/Time: Tue 3/14/2017 3:00:00 PM
End Date/Time: Tue 3/14/2017 4:00:00 PM
Agenda -- WOTUS2 staff mtg 14 March 2017 v1.docx

Nonresponsive Conference Code/ Ex. 6

VERIFYING THE CALL-IN NUMBER

Adding an agenda:

Thanks all for a productive meeting today (Friday the 10th). This meeting is to continue our conversation, with a particular focus on prepping the summary table for use at Wednesday's leadership meeting. It's likely this will be a recurring meeting time but we can verify that on Tuesday. Please try to add your thoughts and comments to the draft summary table on Sharepoint by 5pm Monday.

Stacey will be getting us a room at the Corps, so TBD on that but EPAers should plan for a bit of travel time.

If some are unable to attend in person let's use the same telecom information as for Friday's meeting:

Nonresponsive Conference Code/ Ex. 6

Looking forward to talking with you.

Donna

From: Downing, Donna
Location: DCRoomWest7201/DC-CCW-OWOW
Importance: Normal
Subject: Discussion of WOTUS-2 options, state engagement
Start Date/Time: Wed 3/8/2017 7:30:00 PM
End Date/Time: Wed 3/8/2017 8:30:00 PM

Hi Simma:

As we just discussed on the phone, this is to begin creating the table requested in today's Wetlands General meeting **Deliberative Process / Ex. 5** and a brief discussion on strategies for **Deliberative Process / Ex. 5** Undoubtedly the first of many such meetings on WOTUS-2.

Donna

From: Christensen, Damaris

Location: DCRoomWest7301/DC-CCW-OWOW;

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: debrief of CWR comment analysis

Start Date/Time: Mon 3/13/2017 3:00:00 PM

End Date/Time: Mon 3/13/2017 4:00:00 PM

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Damaris

To: Hewitt, Julie[Hewitt.Julie@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]; Massey, Matt[Massey.Matt@epa.gov]; Guignet, Dennis[Guignet.Dennis@epa.gov]; Scodari, Paul F CIV USARMY CEIWR (US)[Paul.F.Scodari@usace.army.mil]; Thomas Hughes[thomas.e.hughes1.civ@mail.mil]; Kwok, Rose[Kwok.Rose@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Robert.W.Brumbaugh@usace.army.mil[Robert.W.Brumbaugh@usace.army.mil]
Cc: Keating, Jim[Keating.Jim@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Schlieger, Brian[schlieger.brian@epa.gov]
Fact sheet -- State no more stringent than provisions.docx

I propose the following for today's agenda:

-
-
- **Deliberative Process / Ex. 5**
-
-

I will try to add an Adobe Connect link in case Troy or Sarah want to walk us through their documents.

Nonresponsive Internal URL/ Ex. 6

Cc: Schlieger, Brian[schlieger.brian@epa.gov]
To: Hewitt, Julie[Hewitt.Julie@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]; Massey, Matt[Massey.Matt@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Guignet, Dennis[Guignet.Dennis@epa.gov]; Scodari, Paul F CIV USARMY CEIWR (US)[Paul.F.Scodari@usace.army.mil]; Thomas Hughes[thomas.e.hughes1.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Robert.W.Brumbaugh@usace.army.mil[Robert.W.Brumbaugh@usace.army.mil]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]

Proposed agenda:

-
-
- **Deliberative Process / Ex. 5**
-
-
-
-

BTW, this is a room we haven't used before, and is in the NW corner of WJC West. If you enter at 1301 Constitution, walk around to NW corner on 1st floor, use elevators there, and it's on the 14th St end of the long hallway – the room is not directly on the hallway, so walk through into the cubicle space and the door at the left end is the conference room.

Nonresponsive Internal URL/ Ex. 6



NOV 16 2015

MEMORANDUM

TO: EPA DEPUTY ASSISTANT ADMINISTRATOR FOR WATER
EPA REGIONAL ADMINISTRATORS (REGIONS I – X)
USACE CHIEF OF ENGINEERS
USACE DIVISION AND DISTRICT ENGINEERS

SUBJECT: Administration of Clean Water Programs in Light of the Stay of the Clean Water Rule; Improving Transparency and Strengthening Coordination

On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the Clean Water Rule nationwide pending further action of the court. The agencies are fully complying with the stay.¹ We look forward to vigorously defending the merits of the Clean Water Rule, which we continue to believe is fully consistent with the law and based on the best available peer-reviewed science. We are confident that, when implemented, the new rule will make the process of identifying waters protected under the Clean Water Act (CWA) easier to understand, more predictable, and more consistent with current science, while protecting the streams and wetlands that form the foundation of our nation's water resources.

Even as we defend the Clean Water Rule in court, we intend to move forward with measures to improve implementation of the national CWA section 404 program that were announced concurrent with the Rule. It is critical that we capitalize on the momentum already established to improve transparency, strengthen our coordination processes, increase public participation, utilize the best available science and technical data for making case-specific significant nexus determinations, and to promote public health and environmental protection for all Americans who depend on reliable and abundant sources of clean water.

Improving Transparency: A key component of making the agencies' programs more consistent, predictable, and environmentally effective is to increase the public's access to information about how our decisions are made. As reflected in our joint memorandum to

¹ See joint EPA/Army memorandum issued October 10, 2015.

you dated July 8, 2015, we made an unequivocal commitment to make publicly available all jurisdictional determinations made under the CWA section 404 program and conducted under the Clean Water Rule. That commitment will also apply to CWA section 404 program jurisdictional determinations made under the prior regulations during the pendency of the stay. Accordingly, EPA and Corps staff will continue to work together to expeditiously complete development of an easily accessible and up-to-date website providing comprehensive information about jurisdictional determinations being made under the CWA section 404 program. This website will be publicly available nationwide by the end of 2015. We also committed to improving implementation of the CWA section 404 permit program by reducing delays, making the program more understandable, increasing consistency nationwide, and making the public notice process more effective and accessible.

Strengthening Coordination: It remains our goal for the agencies to work together more effectively than ever to improve and expedite administration of CWA Section 404. During the pendency of the stay, as the agencies implement the prior regulatory definition of “waters of the United States” as clarified by the 2008 *Rapanos* Guidance, the agencies should follow the 2007 Army-EPA joint memorandum on coordination² as modified by the January 2008 Corps of Engineers memorandum.³ We will continue to work together to identify means to improve this coordination.

In addition, we remain committed to improving the efficiency of the federal CWA permit process as outlined in our joint memorandum to you dated July 8, 2015. The EPA and Corps workgroup continues the effort to identify opportunities to reduce costs and delays, increase consistency and predictability, and improve protection for human health and the environment. One important element of this effort will be early engagement and close coordination between our two agencies in revising the Nationwide Permits. The revision of the Nationwide Permits will occur over the course of the coming year and presents an important opportunity to improve the effectiveness and efficiency of the section 404 permit program. We are committed to working closely together on this effort from the outset to ensure effective cooperation between the two agencies.

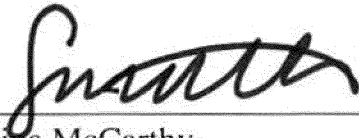
Compliance with the Stay: Since the Sixth Circuit stay was issued, the Army Corps of Engineers and the EPA resumed use nationwide of the agencies’ prior regulations defining the term “waters of the United States.” During the pendency of the stay, we will continue to apply these prior regulations together with relevant case law, applicable policy, and the best available science and technical data in determining which waters are protected by the CWA. Our two agencies will work closely with the Department of Justice to ensure our actions remain consistent with the stay, and we will continue to

² June 5, 2007, Army/EPA joint guidance clarifying coordination on CWA jurisdiction after *Rapanos*, http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/rapanos_guide_memo.pdf.

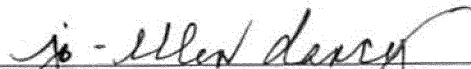
³ January 28, 2008, Corps of Engineers memorandum modifying EPA/Corps jurisdiction coordination after *Rapanos*, available at http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/jd_coord_proc_28jan08.pdf.

provide you with the latest information and answer your questions regarding the stay and other relevant court decisions to help as you implement our responsibilities under the CWA. It is important that we work together to meet our responsibilities under the statute to protect the nation's clean water as consistently and as effectively as possible, while remaining fully consistent with the terms of the stay.

In closing, we want to use this opportunity to thank you and your staff for your commitment to public service and for the work you do to implement our shared CWA responsibilities. This work is critically important to the protection of our nation's water resources, upon which public health, the economy and the environment depend. Your commitment to this work is reflected in your accomplishments and your dedication to continued improvement, and we look forward to working closely with you to meet our goals on behalf of all Americans.



Gina McCarthy
Administrator
U.S. Environmental Protection Agency



Jo-Ellen Darcy
Assistant Secretary for Civil Works
U.S. Department of the Army



MEMORANDUM FOR DEPUTY ASSISTANT ADMINISTRATOR FOR WATER
REGIONAL ADMINISTRATORS (REGIONS I – X)
CHIEF OF ENGINEERS
DIVISION AND DISTRICT ENGINEERS

SUBJECT: Implementation of the Clean Water Rule

Our final Clean Water Rule was published in the *Federal Register* on June 29, 2015, and will become effective on August 28, 2015. We thank each of you for your hard work and coordination to complete this rulemaking. As we move into the implementation phase, we must continue this joint effort and ensure that the process of identifying waters that are and are not protected under the Clean Water Act (CWA) is consistent, predictable, and effective. It is imperative that implementation of the Rule continues to reflect our goal to improve transparency, increase public participation, and promote public health and environmental protection for all of us who depend on reliable and abundant sources of clean water. This goal will be particularly important as we work with our state, tribal, and local partners to apply the Rule.

We are enthusiastic about the opportunities provided by the Rule to improve the process of identifying waters covered under the CWA, and making jurisdictional determinations and permit decisions effectively and efficiently. To meet these goals, it is essential that field staff charged with implementation of the Rule have the tools and resources they need. The next 60 days are particularly important as we work to be fully prepared to apply the Rule when it becomes effective.

There are several key areas on which we must focus immediately:

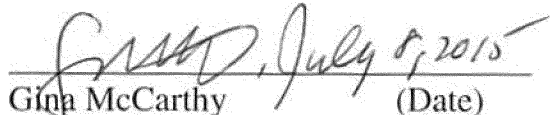
1. **Responding to Information Needs:** The Rule and its preamble provide clear and comprehensive direction regarding the process for conducting jurisdictional determinations. Because of the specificity of the Rule, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) headquarters shall jointly prepare a comprehensive Questions and Answers document, based on discussions with field staff, negating the need for any new manual or guidance document. As with any new procedures, field staff and the

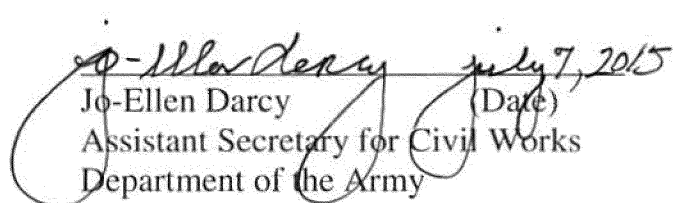
public will have ongoing questions about the Rule, and it is important for EPA and the Corps to identify issues and provide answers as the Rule takes effect. Our goal is to make this information publicly available before the Rule takes effect. We shall also establish the necessary procedures and protocols on how the public can coordinate with the field staff as new questions arise after the Rule becomes effective so that answers can be provided quickly. We must update our websites regularly to make new information on the Rule widely available.

2. **Increasing Transparency:** We shall also establish an automated tracking system for all determinations made under the Rule as soon as possible. This system will be available to the public and provide the essential transparency needed for effective implementation. We must start now to develop a publicly-available national database regarding federal CWA jurisdictional decisions on a District-wide and Regional basis. The database will provide information, for example, on individual positive and negative jurisdictional determinations associated with federal permitting programs as well as statistics on the total number, waterbody type, and watershed location. Data regarding the nature and number of pending determinations must also be made publicly available. The Corps and EPA headquarters will develop national summaries of this information on a quarterly basis, and make it publically available. The Office of the Assistant Secretary of the Army for Civil Works and the Office of the Administrator will develop a memorandum of understanding outlining key roles and responsibilities, as well as procedures, for our respective offices in coordinating implementation of the Rule, data gathering, and information sharing, including development and dissemination of publicly-available information.
3. **Improving the Permit Process:** Strengthening protection of the nation's clean water resources and identifying options for improving federal CWA permitting are mutually supportive objectives on which we must focus as we apply the Rule. Implementation of the Rule, for example, is intended to increase predictability and reduce the time required to conduct jurisdictional determinations. Implementation of the Rule provides an opportunity to consider options for improving efficiencies in federal CWA permitting that could be helpful in reducing potential costs and delays, increasing consistency and predictability, and improving protection for public health and the environment. The Corps and EPA headquarters will convene a workgroup to evaluate existing permitting tools and procedures and identify the changes needed to further reduce costs, delays, and frustration in federal permitting, while improving CWA protections. The workgroup will focus on the appropriate use of tools such as general permits (Nationwide Permits), increasing the availability of information on issued permits on which new applicants could rely in designing projects, and improved coordination with federal and state permitting partners to reduce overlap and redundancy in permit reviews. Before

the end of calendar year 2015, the workgroup shall develop a suite of options for our consideration.

As public servants, we have a profound obligation to implement the Rule in the most effective and efficient manner possible. Nothing less is acceptable. The move from old to new procedures must be as seamless and effective for the public as we can make it. We will be relying heavily on the experience and judgment of our senior leadership team as we transition to the new Rule. Your personal attention is needed if we are to succeed in this all-important phase. We look forward to working with each of you in addressing the key issues and in achieving the goals and strategic targets outlined above.


Gina McCarthy (Date)
Administrator
U.S. Environmental Protection Agency


Jo-Ellen Darcy (Date)
Assistant Secretary for Civil Works
Department of the Army

AGENDA

WOTUS-2 STAFF WORKING MEETING

**Tuesday, March 14, 2017
11-12pm**

Nonresponsive Conference Code/ Ex. 6

1. Introductions (All)(3 minutes)
2. Overview of briefing materials: table, paper (Donna, Rose, Simma) (10 minutes)
3. Discussion of briefing materials (All)(40 minutes)
 - a. Plan for discussing at Wednesday 10am meeting
 - b. Content
4. Next steps (Donna)(7 minutes)
 - a. Coming later today: staffing plan for Army Corps input
 - b. Recurring Tuesday 11am meeting?
 - c. Wednesday's senior-level meeting 10am
 - d. Wednesday's staff-level follow-up meeting 11am

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Chemerys, Ruth[Chemerys.Ruth@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Schaefer-Gomez, Julia[Schaefer-Gomez.Julia@epa.gov]
From: Kwok, Rose
Sent: Mon 6/12/2017 5:13:19 PM
Subject: RE: Planning session for WOTUS-2 staffing
[staffing plan fourth draft.docx](#)

-----Original Appointment-----

From: Downing, Donna
Sent: Tuesday, June 06, 2017 9:55 AM
To: Downing, Donna; Christensen, Damaris; Kwok, Rose; McDavit, Michael W.; Wesson, Dolores; Chemerys, Ruth; Peterson, Carol; Bennett, Brittany; Schaefer-Gomez, Julia
Subject: Planning session for WOTUS-2 staffing
When: Monday, June 12, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)

Hi everybody –

This meeting is to plan staffing for the ongoing and upcoming “waters of the US-2” (WOTUS-2) initiative. During the meeting, we’ll identify

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I’ll distribute a draft list of specific activities beforehand.

I’m hoping this time will work ... with peoples’ travel schedules it’s been hard to identify a date and time.

If you know of additional OWOW staff that I should have included on the invitation, please forward to them. Thanks!

Looking forward to the discussion.

Donna

From: Pollins, Mark
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 6/13/2017 5:00:00 PM
End Date/Time: Tue 6/13/2017 6:00:00 PM

From: DCRoomWest7201/DC-CCW-OWOW
Location: DCRoomWest7201/DC-CCW-OWOW (Note: is different room than usual!)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 6/14/2017 3:00:00 PM
End Date/Time: Wed 6/14/2017 4:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Flannery-Keith, Erin
Sent: Mon 6/12/2017 9:10:17 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I am out of the office at a training and will return on Monday, June 19. I will respond as soon as possible. Thank you.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Mon 6/12/2017 9:10:18 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I have moved on from OWOW. Please feel free to call Personal Phone / Ex. 6 should you wish to contact me.

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 6/13/2017 5:00:00 PM
End Date/Time: Tue 6/13/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Bahk, Benjamin
Sent: Mon 6/12/2017 9:10:17 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I will be out of the office June 9-15th. On Friday, June 9, Bruce Fergusson will be the acting branch chief of the industrial branch. Bruce can be reached at 202-564-1261. From June 12-15, Kathy Greenwald will be the acting branch chief of the industrial branch. Kathy can be reached at 202-564-3252. Otherwise, I will respond to your message when I return to the office.

Thank you.

From: Bennett, Brittany
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: 7114M WOTUS Interagency Room Reservation
Start Date/Time: Tue 7/18/2017 5:00:00 PM
End Date/Time: Tue 7/18/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: 7129 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7343/DC-CCW-OWOW
Importance: Normal
Subject: 7343 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/20/2017 5:00:00 PM
End Date/Time: Tue 6/20/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Bennett, Brittany
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/13/2017 4:00:00 PM
End Date/Time: Tue 6/13/2017 5:00:00 PM

From: DCRoomWest7114M/DC-CCW-OWOW
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 staffing discussion pre-meeting
Start Date/Time: Mon 6/12/2017 3:30:00 PM
End Date/Time: Mon 6/12/2017 4:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; McGuffie, Brianne E CIV USARMY CESAJ (US)[Brianne.E.McGuffie@usace.army.mil]
From: Hurlid, Kathy
Sent: Fri 6/9/2017 6:46:56 PM
Subject: RE: [Non-DoD Source] Urgent - New Caution-url: for WOTUS2: Federalism webinar w/ACWA

Great, thanks

-----Original Message-----

From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Friday, June 09, 2017 2:38 PM
To: Cindy Barger <cindy.s.barger.civ@mail.mil>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; McGuffie, Brianne E CIV USARMY CESAJ (US) <Brianne.E.McGuffie@usace.army.mil>
Subject: RE: [Non-DoD Source] Urgent - New Caution-url: for WOTUS2: Federalism webinar w/ACWA

Bri will be on the line in listen-only mode for the Corps. Thanks!

Stacey M. Jensen
HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314
(202) 761-5856

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Friday, June 09, 2017 2:35 PM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Reid, Darren <Reid.Darren@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Dale, David F Jr SES CELRD CELRD (US) <David.F.Dale@usace.army.mil>
Subject: RE: [Non-DoD Source] Urgent - New Caution-url: for WOTUS2: Federalism webinar w/ACWA

Thanks Kathy - I'll be on :)

-----Original Message-----

From: Hurlid, Kathy [mailto:Hurlid.Kathy@epa.gov]
Sent: Friday, June 09, 2017 2:33 PM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Stacey.M.Jensen@usace.army.mil; Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>; Reid, Darren <Reid.Darren@epa.gov>; Klos, Caroline <Klos.caroline@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; David.F.Dale@usace.army.mil
Subject: [Non-DoD Source] Urgent - New Caution-url: for WOTUS2: Federalism webinar w/ACWA

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Hi everyone,

I just got a new URL for today's call at 3. Here is the call in number so you have both in one place.

Nonresponsive Conference Code/ Ex. 6

Conference Number(s): Nonresponsive Conference Code/ Ex. 6

Participant Code: Nonresponsive Conference Code/ Ex. 6

Darren can you update the meeting invite for today's 3 pm WOTUS federalism call with ACWA. Thanks so much, Kathy

-----Original Appointment-----

From: Goodin, John

Sent: Wednesday, May 31, 2017 12:18 PM

To: Goodin, John; Eisenberg, Mindy; Bennett, Tate; Hurl, Kathy; Christensen, Damaris;

Stacey.M.Jensen@usace.army.mil; Cindy Barger; Reid, Darren; Klos, Caroline

Cc: Hanson, Andrew; Wesson, Dolores; McDavit, Michael W.; Downing, Donna;

David.F.Dale@usace.army.mil

Subject: WOTUS2: Federalism webinar w/ACWA

When: Friday, June 09, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW

Conference Number(s): Nonresponsive Conference Code/ Ex. 6

Participant Code: Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Agenda will be updated shortly.

Please Note:EPA will be on the call at 3 pm to present via the adobeconnect webinar URL, take questions/discuss concerns, and then they will drop off the call.As we get closer to the call, we will let you know if we decide to move the call start time back past 2:00 pm ET to 2:30 or 3:00.

Agenda

Introductions

Welcome - Association chair

- * EPA Political(s) - Tate Bennett, others
- * Army rep
- * USACE rep

Presentation - Mindy Eisenberg or John Goodin

Q&A

To: Downing, Donna[Downing.Donna@epa.gov]
From: Swackhammer, J-Troy
Sent: Thur 6/8/2017 4:03:03 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

OK got it. thx

From: Downing, Donna
Sent: Thursday, June 08, 2017 12:02 PM
To: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

No, it's biweekly and we met last Tuesday.

Donna

Sent from my iPhone

On Jun 8, 2017, at 11:59 AM, Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov> wrote:

Hey Donna, is this meeting on today?

-----Original Appointment-----

From: Downing, Donna
Sent: Tuesday, May 23, 2017 1:45 PM
To: Kwok, Rose; Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Stefania Shamet; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Peter Stokely; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Rose Kwok; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; James Morgan; Moffatt, Brett; Feinmark, Phyllis; Kovac, Steve
Cc: Swackhammer, J-Troy; Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen; Alexander, Laurie; Goodwin, Kara
Subject: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US &

Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

To: Downing, Donna[Downing.Donna@epa.gov]
From: Wesson, Dolores
Sent: Thur 6/8/2017 4:02:33 PM
Subject: RE: Emailing: Clean Water Rule as published in FR.pdf

Thank you!!!

-----Original Message-----

From: Downing, Donna
Sent: Thursday, June 08, 2017 11:04 AM
To: Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: Emailing: Clean Water Rule as published in FR.pdf

Hi Delores!

Here's a .pdf of the Clean Water Rule. I just discovered when you go to the Clean Water Rule website it forwards you to the website for the new rulemaking.

Donna

Your message is ready to be sent with the following file or link attachments:

Clean Water Rule as published in FR.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Pollins, Mark

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 6/6/2017 5:00:00 PM

End Date/Time: Tue 6/6/2017 6:00:00 PM

From: Pollins, Mark

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: FW: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 6/6/2017 5:00:00 PM

End Date/Time: Tue 6/6/2017 6:00:00 PM

From: McDavit, Michael W.
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Accepted: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

From: Chemerys, Ruth
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Accepted: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

From: DCRoomWest7114M/DC-CCW-OWOW
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Accepted: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Reid, Darren
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below
Importance: Normal
Subject: WOTUS-2: Federalism Webinar with ASFM & IOGCC
Start Date/Time: Wed 6/7/2017 6:00:00 PM
End Date/Time: Wed 6/7/2017 7:00:00 PM
[WOTUSIOGCCandASFMinvite.docx](#)
[WOTUSIOGCCandASFMPPT.PPTX](#)

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in number: **Nonresponsive Conference Code/ Ex. 6**

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

From: Kwok, Rose

Location: Brothertown Conference Room (at Conference) or **Nonresponsive Conference Code/ Ex. 6**

Importance: Normal

Subject: NCAI Mid-Year Conference: Tribal Listening Session on WOTUS

Start Date/Time: Wed 6/14/2017 4:00:00 PM

End Date/Time: Wed 6/14/2017 5:00:00 PM

Cindy and I will be attending in person, but I'm setting up a phone line for folks to call in who are interested in calling in. The call in is **Nonresponsive Conference Code/ Ex. 6**

Karen – can you help take notes?

From: McDavit, Michael W.

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Reid, Darren
Location: DCRoomWest6300D/DC-CCW-OW-WEST
Importance: Normal
Subject: WOTUS2: Federalism webinar with ASWM
Start Date/Time: Tue 6/6/2017 6:00:00 PM
End Date/Time: Tue 6/6/2017 7:00:00 PM
[federalism ASWM ppt 6-6-17 \(002\).pdf](#)
[ASWM state federalism outreach invite.pdf](#)

Be sure to register a day or two prior to the webinar to get a unique call in number.

Here is the link to register: **Nonresponsive Internal URL/ Ex. 6**

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

From: Reid, Darren
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below
Importance: Normal
Subject: WOTUS-2: Federalism Webinar with ASFM & IOGCC
Start Date/Time: Wed 6/7/2017 6:00:00 PM
End Date/Time: Wed 6/7/2017 7:00:00 PM

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in TBD:

Agenda

Introductions

Welcome – Association chair

- EPA Political(s) – Tate Bennett, others
- Army rep
- USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

From: Reid, Darren
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below
Importance: Normal
Subject: WOTUS-2: Federalism Webinar with ASFM & NWRA
Start Date/Time: Wed 6/7/2017 6:00:00 PM
End Date/Time: Wed 6/7/2017 7:00:00 PM
[state federalism outreach invite WGA.PDF](#)
[state federalism outreach invite WGA.PDF](#)

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in TBD:

Agenda

Introductions

Welcome – Association chair

- [REDACTED] EPA Political(s) – Tate Bennett, others
- [REDACTED] Army rep
- [REDACTED] USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

From: McDavit, Michael W.
Location: Mindy's office
Importance: Normal
Subject: WOTUS 2.0 Planning with Mindy
Start Date/Time: Wed 5/31/2017 1:00:00 PM
End Date/Time: Wed 5/31/2017 1:30:00 PM

From: Martinez, Maria
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Kwok, Rose
Location: Walking meeting headed to gelato? Couldn't find a room
Importance: Normal
Subject: Accepted: WOTUS JD Team planning
Start Date/Time: Tue 5/30/2017 7:00:00 PM
End Date/Time: Tue 5/30/2017 7:45:00 PM

From: Christensen, Damaris
Location: DCRoomWest7301/DC-CCW-OWOW call in: Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: FW: WOTUS - ECOS federalism call
Start Date/Time: Tue 5/30/2017 8:00:00 PM
End Date/Time: Tue 5/30/2017 9:00:00 PM

-----Original Appointment-----

From: Goodin, John
Sent: Wednesday, May 24, 2017 3:37 PM
To: Goodin, John; Greenwalt, Sarah; Bennett, Tate; Hurlld, Kathy
Cc: Barbery, Andrea; Bowles, Jack; Christensen, Damaris; Eisenberg, Mindy; McDavit, Michael W.; Nandi, Romell; Cindy Barger; Jensen, Stacey M CIV USARMY HQDA (US); Schmauder, Craig R SES (US); Wagner, Kenneth; Cheatham-Strickland, Latonia
Subject: WOTUS - ECOS federalism call
When: Tuesday, May 30, 2017 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW call in: Nonresponsive Conference Code/ Ex. 6

Call in number:



From: Goodin, John
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/31/2017 3:00:00 PM
End Date/Time: Wed 5/31/2017 4:00:00 PM

Speaking engagement ...will catch up on my return

From: Goodin, John
Location: DCRoomWest6300D/DC-CCW-OW-WEST call in info below
Importance: Normal
Subject: WOTUS-2: Federalism Webinar with ASFM & NWRA
Start Date/Time: Wed 6/7/2017 6:00:00 PM
End Date/Time: Wed 6/7/2017 7:00:00 PM

Association of State floodplain managers is confirmed, National water resources association is yet to be confirmed.

Adobe Connect: **Nonresponsive Internal URL/ Ex. 6**

Call in TBD:

Agenda and PPT to be added.

From: Goodin, John
Location: WJCW 7301; webinar **Nonresponsive Internal URL/ Ex. 6** call in
Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: WOTUS2: Federalism webinar w/NASADA
Start Date/Time: Wed 5/31/2017 8:00:00 PM
End Date/Time: Wed 5/31/2017 9:00:00 PM
[federalism NASDA ppt 5-31-17.pdf](#)
[state federalism outreach invite NASDA.PDF](#)

For those at EPA I have reserved a room. This is the connection details for those not joining us in person.

Nonresponsive Internal URL/ Ex. 6 call in **Nonresponsive Conference Code/ Ex. 6**

From: Kwok, Rose
Location: [Nonresponsive Conference Code/ Ex. 6] and webinar link; Pacific Conference Room
Importance: Normal
Subject: Confirmed: Region 4 RTOC on WOTUS
Start Date/Time: Wed 6/7/2017 3:00:00 PM
End Date/Time: Wed 6/7/2017 4:00:00 PM

Region 4 has confirmed that we will have an opportunity to present on WOTUS at their next RTOC call. I will still be on travel so someone else from HQ will be giving the presentation (sorry that I'll be gone, but I will try to call in if possible). Region 4 has given us most of the hour to present.

Call-in: [Nonresponsive Conference Code/ Ex. 6]

Link to webinar with OW - [Nonresponsive Internal URL/ Ex. 6]

Room in DC: I've reserved the Pacific Conference Room, 7114-M WJC West

From: Kwok, Rose
Location: [Nonresponsive Conference Code/ Ex. 6] or 7301 WJC West (Potomac Conference Room)
Importance: Normal
Subject: Hold for Call with Tolowa Dee-ni' Nation on WOTUS
Start Date/Time: Wed 5/31/2017 4:00:00 PM
End Date/Time: Wed 5/31/2017 5:00:00 PM

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the WOTUS rulemaking efforts.

Conference line: [Nonresponsive Conference Code/ Ex. 6]

In DC, I've reserved the Potomac Conference Room, 7301 WJC West

From: Kwok, Rose
Location: [Nonresponsive Conference Code/ Ex. 6] or DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: HOLD for Region 6 RTOC WOTUS Presentation
Start Date/Time: Tue 6/6/2017 3:30:00 PM
End Date/Time: Tue 6/6/2017 4:00:00 PM

Hold for the Region 6 RTOC. **I will not be able to give this presentation** since I will be on travel. Please let me know if there are others that should be invited.

Their call begins at 11:30 AM on 6/6, which hopefully should work for everyone. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer [Deliberative Process / Ex. 5]

Deliberative Process / Ex. 5

Conference Number: [Nonresponsive Conference Code/ Ex. 6] I've reserved Potomac Conference Room.

From: Goodwin, Kara
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7129/DC-CCW-OWOW; Teleconferencing Room 7129 (note is different # for this week's meeting only!) **Nonresponsive Conference Code/ Ex. 6**

Importance: Normal

Subject: Declined: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/23/2017 5:00:00 PM

End Date/Time: Tue 5/23/2017 6:00:00 PM

Your request was declined because there are conflicts.

The conflicts are:

Organizer and Time of Conflicting Meeting

Peterson, Carol - Tuesday, May 23, 2017 1:00:00 PM to Tuesday, May 23, 2017 2:00:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Tue 5/23/2017 3:38:27 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I am out of the office on work travel the week of May 22. Please contact Sandra Connors if your matter requires more immediate attention.

Thanks,
John

From: Stokely, Peter

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

(note is different # for this week's meeting only!)

Importance: Normal

Subject: Declined (Away):WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/23/2017 5:00:00 PM

End Date/Time: Tue 5/23/2017 6:00:00 PM

I will be out of the office May 23-25, 2017

To: Downing, Donna[Downing.Donna@epa.gov]
From: Stokely, Peter
Sent: Tue 5/23/2017 3:38:26 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I will be out of the office May 23-25, 2017

To: Downing, Donna[Downing.Donna@epa.gov]
From: Speir, Jeffrey
Sent: Tue 5/23/2017 3:38:26 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I am out of the office until Monday, May 30. I will respond to your message when I return.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Bahk, Benjamin
Sent: Tue 5/23/2017 3:38:25 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I will be out of the office on May 22-26. During my absence, Kathy Greenwald will be the acting branch chief of the industrial branch. Kathy can be reached at 202-564-3252. I will respond to your message when I return to the office.

Thank you.

From: Kwok, Rose
Location: Telephone TBA
Importance: Normal
Subject: Hold: For Region 8 RTOC WOTUS Discussion
Start Date/Time: Thur 6/22/2017 4:30:00 PM
End Date/Time: Thur 6/22/2017 6:00:00 PM

R8 RTOC would like info/an update on WOTUS at their RTOC meeting. I'll confirm the exact time once we hear back from Region 8, but this is a calendar hold for now.

We'll be on the agenda on **Thursday, 6/22 between 12:30 – 2:00 PM EDT**. Callie is confirming timing (there is one other lengthy agenda item planned during that time. I indicated that (max) we'd probably need 45-60 minutes). We would conference call into the hotel meeting room and would need to provide the PPT slides to participants in advance of the meeting. Callie will follow up week of 5/22 with confirmed time for is on the agenda.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Thur 5/18/2017 4:03:35 PM
Subject: Donna Downing using 3233

Will you still need this room for 5/24 since WOTUS meeting has been cancelled? Please advise.

Subject: Donna Downing using 3233

Start: Wed 5/24/2017 10:45 AM
End: Wed 5/24/2017 11:45 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Downing, Donna

Categories: Blue Category

From: Hudiburgh, Gary
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/24/2017 3:00:00 PM
End Date/Time: Wed 5/24/2017 4:00:00 PM

From: Kwok, Rose

Location: Region 10 Office (7114M - Pacific Conference Room in DC), Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6 plus webinar

Importance: Normal

Subject: Confirmed: In-Person Meeting/Call with the Snoqualmie Tribe on WOTUS

Start Date/Time: Tue 6/20/2017 6:00:00 PM

End Date/Time: Tue 6/20/2017 7:00:00 PM

The tribe has confirmed this date and time.

Region 10 folks – can you reserve a room? Reserved the Pacific Conference Room (7114M) for those in DC.

Conference number: Nonresponsive Conference Code/ Ex. 6

Webinar: Nonresponsive Internal URL/ Ex. 6

From: Kwok, Rose
Location: Webinar
Importance: Normal
Subject: TENTATIVE: Region 4 RTOC on WOTUS
Start Date/Time: Wed 6/7/2017 3:00:00 PM
End Date/Time: Wed 6/7/2017 4:00:00 PM

Calendar hold for now – I will update with additional information once confirmed.

I will still be on travel so I will need someone else to give the presentation (sorry!). We may likely have the entire hour

From: Kwok, Rose
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: HOLD for Region 6 RTOC WOTUS Presentation
Start Date/Time: Tue 6/6/2017 3:30:00 PM
End Date/Time: Tue 6/6/2017 4:00:00 PM

Hold for the Region 6 RTOC. **I will not be able to give this presentation** since I will be on travel. Please let me know if there are others that should be invited.

Their call begins at 11:30 AM on 6/6, which hopefully should work for everyone. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer that we send them the slides in advance and to not do a webinar.

Call-in forthcoming. I've reserved Potomac Conference Room.

From: Kwok, Rose
Location: Region 10 Office/Phone
Importance: Normal
Subject: Hold for In-Person Meeting/Call with the Snoqualmie Tribe on WOTUS
Start Date/Time: Tue 6/20/2017 7:30:00 PM
End Date/Time: Tue 6/20/2017 8:30:00 PM

Calendar hold for now.

Will work out room logistics once confirmed. Reserved Potomac Conference Room for those in DC.

From: Feinmark, Phyllis
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Feinmark, Phyllis
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

From: Feinmark, Phyllis
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Martinez, Maria
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Moffatt, Brett
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Your meeting was forwarded

Leidy, Robert has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 3:00 PM-4:00 PM.

Recipients

Moffatt, Brett

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Nelson, Tomeka[Nelson.Tomeka@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Chancey, Barbara[Chancey.Barbara@epa.gov]
From: Evalenko, Sandy
Sent: Thur 5/4/2017 3:48:20 PM
Subject: RE: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Tomeka and Others Thanks for the quick turnaround!

From: Nelson, Tomeka
Sent: Wednesday, May 03, 2017 3:49 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Chancey, Barbara <Chancey.Barbara@epa.gov>
Subject: FW: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Thanks for coordinating this Sandy. With Carrie's "looks fine" response we are good to go on this.

Deliberative Process / Ex. 5

Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Kwok, Rose
Sent: Wednesday, May 03, 2017 3:37 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Chancey, Barbara <Chancey.Barbara@epa.gov>
Subject: Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kupchan, Simma
Sent: Wednesday, May 3, 2017 2:55:48 PM
To: Kwok, Rose; Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy; Wehling, Carrie
Cc: Chancey, Barbara
Subject: RE: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Deliberative Process / Attorney Client Ex. 5

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Kwok, Rose

Sent: Wednesday, May 03, 2017 1:51 PM

To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>

Cc: Chancey, Barbara <Chancey.Barbara@epa.gov>

Subject: Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Deliberative Process / Ex. 5

but can someone look at the abstracts to make sure they look okay? I'm copying Carrie and Simma here as well. Thanks

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose

Sent: Wednesday, May 3, 2017 1:33:39 PM

To: Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy

Cc: Chancey, Barbara

Subject: Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Hi Tomeka,

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Nelson, Tomeka

Sent: Wednesday, May 3, 2017 1:15:47 PM

To: Downing, Donna; Kwok, Rose; Christensen, Damaris; Eisenberg, Mindy

Cc: Chancey, Barbara

Subject: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Please take a look at the attached Reg Agenda Galley Proof and make any needed responses or edits by NOON tomorrow. Sorry for the quick turnaround, as you can see, I am just receiving the request.

166 and #167 WOTUS pages 274-275 (OWOW)

Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy

Sent: Wednesday, May 03, 2017 1:04 PM

To: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>; Gerstein, Arielle <gerstein.arielle@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Stebe, Katherine <Stebe.Katherine@epa.gov>; Schollhamer, Mary <Schollhamer.Mary@epa.gov>

Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>

Subject: Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Urgent due by 12:00 tomorrow to OP. Please send me comments by 11:00 am

Here's the Spring Reg Agenda Galley proofs. I will be reviewing all of OW's actions and recommend that you do to since this was done so quickly.

OW has the following comments –

Deliberative Process / Ex. 5

166 and #167 WOTUS pages 274-275 (OWOW)

Deliberative Process / Ex. 5

From: Muellerleile, Caryn

Sent: Wednesday, May 03, 2017 10:31 AM

To: Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Fegley, Robert <Fegley.Robert@epa.gov>; Williams, Pat <Williams.Pat@epa.gov>

Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>

Subject: Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Importance: High

We did not receive comments on the FY17 and FY18 regulatory/deregulatory cost spreadsheets. See attached for (few) comments on the Agenda itself. Note below which agenda entries (not page numbers) your office should review.

ORD – 92

OCSPP – 98, 110, 112, 119, 123, 130

OW – 160, 163, 167, 170, 185

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 5/4/2017 3:39:16 PM
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Agreed. Karen, I'll send you the version to post.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Thursday, May 04, 2017 11:28 AM
To: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

I think we should post a pdf of the powerpoint.

Damaris

From: Gude, Karen
Sent: Thursday, May 04, 2017 11:23 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

AIEO's tribal portal/website has moved here: <https://www.epa.gov/tribal>.

I can have the powerpoint slides and any supplemental consultation materials posted to the WOUS entry in the TCOTS database

Nonresponsive Internal URL/ Ex. 6

Currently, we've have the signed consult letter posted to TCOTS.

Thanks,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Kwok, Rose

Sent: Thursday, May 04, 2017 10:58 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>

Subject: FW: Waters of the United States - Tribal Webinar Thank You

Hi Mindy,

We said we would make the slides available. How would you like me to share the slides (of course as a PDF)? I can email them to the participants.

Karen – does the tribal portal website no longer exist?

From: Erin Woodward [<mailto:ewoodward@lagunapueblo-nsn.gov>]

Sent: Thursday, May 04, 2017 10:13 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Subject: RE: Waters of the United States - Tribal Webinar Thank You

Hello Ms. Kwok,

Will the slides for the webinar be made available?

Thank you,

E. Nikki Woodward

Water Quality Specialist|Pueblo of Laguna

Phone: [505.552.5040](tel:505.552.5040)|ewoodward@lagunapueblo-nsn.gov

From: Rose Kwok [<mailto:epacallcenter@epa.gov>]

Sent: Friday, April 28, 2017 1:32 AM

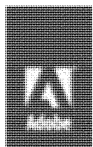
To: Erin Woodward <ewoodward@lagunapueblo-nsn.gov>

Subject: Waters of the United States - Tribal Webinar Thank You

Thank you for attending "Waters of the United States - Tribal Webinar". We appreciate your participation and hope you found the event valuable.

Thank you,

Rose Kwok



If you've never used Adobe Connect, get a quick overview:
<http://www.adobe.com/products/adobeconnect.html>

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To: Gude, Karen[Gude.Karen@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 5/4/2017 3:27:39 PM
Subject: RE: Waters of the United States - Tribal Webinar Thank You

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Damaris

From: Gude, Karen
Sent: Thursday, May 04, 2017 11:23 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

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I can have the powerpoint slides and any supplemental consultation materials posted to the WOUS entry in the TCOTS database

Nonresponsive Internal URL/ Ex. 6

Currently, we've have the signed consult letter posted to TCOTS.

Thanks,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Kwok, Rose
Sent: Thursday, May 04, 2017 10:58 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Waters of the United States - Tribal Webinar Thank You

Hi Mindy,

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From: Erin Woodward [<mailto:ewoodward@lagunapueblo-nsn.gov>]
Sent: Thursday, May 04, 2017 10:13 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Hello Ms. Kwok,

Will the slides for the webinar be made available?

Thank you,

E. Nikki Woodward

Water Quality Specialist|Pueblo of Laguna

Phone: [505.552.5040](tel:505.552.5040)|ewoodward@lagunapueblo-nsn.gov

From: Rose Kwok [mailto:epacallcenter@epa.gov]
Sent: Friday, April 28, 2017 1:32 AM
To: Erin Woodward <ewoodward@lagunapueblo-nsn.gov>
Subject: Waters of the United States - Tribal Webinar Thank You

Thank you for attending "Waters of the United States - Tribal Webinar". We appreciate your participation and hope you found the event valuable.

Thank you,

Rose Kwok



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<http://www.adobe.com/products/adobeconnect.html>

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To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]
From: Kwok, Rose
Sent: Thur 5/4/2017 2:58:06 PM
Subject: FW: Waters of the United States - Tribal Webinar Thank You

Hi Mindy,

We said we would make the slides available. How would you like me to share the slides (of course as a PDF)? I can email them to the participants.

Karen – does the tribal portal website no longer exist?

From: Erin Woodward [mailto:ewoodward@lagunapueblo-nsn.gov]
Sent: Thursday, May 04, 2017 10:13 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Hello Ms. Kwok,

Will the slides for the webinar be made available?

Thank you,

E. Nikki Woodward

Water Quality Specialist|Pueblo of Laguna

Phone: [505.552.5040](tel:505.552.5040)|ewoodward@lagunapueblo-nsn.gov

From: Rose Kwok [mailto:epacallcenter@epa.gov]
Sent: Friday, April 28, 2017 1:32 AM
To: Erin Woodward <ewoodward@lagunapueblo-nsn.gov>
Subject: Waters of the United States - Tribal Webinar Thank You

Thank you for attending "Waters of the United States - Tribal Webinar". We appreciate your participation and hope you found the event valuable.

Thank you,

Rose Kwok



If you've never used Adobe Connect, get a quick overview:
<http://www.adobe.com/products/adobeconnect.html>

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From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Hewitt, Julie[Hewitt.Julie@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Schlieger, Brian[schlieger.brian@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]
From: Swackhammer, J-Troy
Sent: Thur 5/4/2017 12:46:59 PM
Subject: RE: EnviroAtlas Application

Sounds good, Julie.

Thx,

Troy

From: Hewitt, Julie
Sent: Wednesday, May 03, 2017 6:57 PM
To: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Schlieger, Brian <schlieger.brian@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>
Subject: RE: EnviroAtlas Application

Hi Troy,

Deliberative Process / Ex. 5

Thanks,

Julie

From: Swackhammer, J-Troy
Sent: Thursday, April 27, 2017 2:49 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Hewitt, Julie
<Hewitt.Julie@epa.gov>
Cc: Schlieger, Brian <schlieger.brian@epa.gov>
Subject: EnviroAtlas Application

Sharing from today's Ag Forum call to see if you'll are aware of this application.

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Somerville, Eric
Sent: Thur 5/4/2017 12:44:54 PM
Subject: Q&A: WOTUS desk statement

Good Morning-

I am hopeful that you can clarify something for me. The attachment provided with Mindy's message was referred to by her as a "desk statement" approved by OPA. Yet the document itself contains a header that marks it as "Draft/Internal/Deliberative." I am consequently uncertain how this desk statement should be used.

- Can we provide it to stakeholders or members of the press that contact us inquiring about the status of the Clean Water Rule and/or the path forward pursuant to WOTUS?

- Are we expected instead to simply read from the statement, but not distribute it?

Thank you for any clarification you can provide.

-Eric

Eric Somerville

U.S. EPA Region 4 | Ocean, Wetlands & Streams Protection Branch

c/o SESD (F120-6) | 980 College Station Road | Athens, GA 30605-2720

tel 706.355.8514 | somerville.eric@epa.gov

From: Eisenberg, Mindy

Sent: Wednesday, May 03, 2017 9:45 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>; EPA Wetlands Managers <EPA_Wetlands_Managers@epa.gov>; Allnutt, David <Allnutt.David@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>

Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>

Subject: WOTUS desk statement

Hi All,

As promised, attached is the OPA approved desk statement for submitting the step 1 rule to OMB. We will be working on additional talking points and FAQs to share with you soon. Also, we are working on a new web page which we plan to launch prior to the proposed rule going to the federal register. This will be a resource for everyone to direct basic questions. Stay tuned!

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Schlieger, Brian[schlieger.brian@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]
From: Hewitt, Julie
Sent: Wed 5/3/2017 10:56:45 PM
Subject: RE: EnviroAtlas Application

Hi Troy,

Deliberative Process / Ex. 5

Thanks,

Julie

From: Swackhammer, J-Troy
Sent: Thursday, April 27, 2017 2:49 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>
Cc: Schlieger, Brian <schlieger.brian@epa.gov>
Subject: EnviroAtlas Application

Sharing from today's Ag Forum call to see if you'll are aware of this application.

From: Horchem, Brad
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Livingston, Peggy
Sent: Tue 5/2/2017 8:57:43 PM
Subject: RE: WOTUS news

Thank you. We can share this further within the EPA, can't we?

Peggy Livingston

Senior Enforcement Attorney

Legal Enforcement Program

U.S. EPA Region 8

1595 Wynkoop St.

Denver, CO 80202

(303) 312-6858 (phone)

(303) 312-7202 (fax)

From: Eisenberg, Mindy

Sent: Tuesday, May 02, 2017 2:56 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-

Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; David.F.Dale@usace.army.mil; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; EPA Wetlands Managers <EPA_Wetlands_Managers@epa.gov>; Schmauder, Craig R SES (US) <craig.r.schmauder.civ@mail.mil>; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Campbell, Ann <Campbell.Ann@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: WOTUS news

Hi Folks,

I wanted to share with you the news that EPA submitted the draft proposed step 1 rule to OMB and OMB has accepted it. The notice that OMB has the proposal is expected to be posted on their website tomorrow. Thanks to the many people involved in getting to this important milestone!! Any press questions should be referred to press@epa.gov. While we have a draft desk statement, we haven't received final clearance from OPA. We'll share that with the workgroup when approved.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 12:00 PM

To: Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria

Cc: Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, May 04, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION:

Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 5/2/2017 2:33:56 PM
Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

Fyi, materials are due nlt 3:00pm today. Thank you.

Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**
Location: 3233 WJCE

Start: Wed 5/3/2017 10:00 AM
End: Wed 5/3/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; Frithsen, Jeff; Nickerson, William; Frazer, Brian; Dravis, Samantha; Keating, Jim; David.F.Dale@usace.army.mil; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Hewitt, Julie; Bowman, Liz; McDavit, Michael W.; Stokely, Peter; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah; Donald.e.jackson@usace.army.mil; Brown, Byron

Optional Attendees: Macara Lousberg; Joseph Theis; Benjamin Bahk; Sandy Evalenko; Andrew Hanson; Connors, Sandra; FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Pollins, Mark; Washington, Valerie; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Theis, Joseph; Bahk, Benjamin; Evalenko, Sandy; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Clark, Becki; Indermark, Michele; Hanson, Andrew; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Pittman, Emerson W CTR USARMY HQDA OCPA (US)

To: Downing, Donna[Downing.Donna@epa.gov]
From: Neugeboren, Steven
Sent: Fri 4/28/2017 6:20:34 PM
Subject: Automatic reply: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

I'm **Personal Matters / Ex. 6** If you need assistance on Friday April 28 please contact Mary Ellen Levine at 574-5487.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Jones-Coleman, Diane
Sent: Fri 4/28/2017 5:54:56 PM
Subject: Automatic reply: For review & processing: draft proposed step 1 WOTUS rule for OMB review

Greetings,

I am out of the office today.

I will respond to your message on Tuesday, May 2, 2017.

Thank you.

From: Shapiro, Mike
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Proposed Outreach Strategy for WOTUS Rulemaking
Start Date/Time: Mon 5/1/2017 2:15:00 PM
End Date/Time: Mon 5/1/2017 3:00:00 PM
OW Meeting Request Form outreach.docx

To: Downing, Donna[Downing.Donna@epa.gov]
From: Hewitt, Julie
Sent: Thur 4/27/2017 5:45:17 PM
Subject: Automatic reply: RESEND RE: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

I am out of the office and will respond to your message when I return on Friday, April 28th.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Frazer, Brian
Sent: Thur 4/27/2017 5:45:17 PM
Subject: Automatic reply: RESEND RE: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

Personal Matters / Ex. 6

will respond to your email when I return to the office.

Thank you

bf

To: Downing, Donna[Downing.Donna@epa.gov]
From: Orvin, Chris
Sent: Thur 4/27/2017 5:45:16 PM
Subject: Automatic reply: RESEND RE: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

Personal Matters / Ex. 6 If you need immediate assistance on an urgent matter, please contact Greg Peck. I will respond to your email when I return.

Thanks,
Chris

From: Martinez, Maria
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Shapiro, Mike
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Proposed Outreach Strategy for WOTUS Rulemaking
Start Date/Time: Mon 5/1/2017 2:00:00 PM
End Date/Time: Mon 5/1/2017 2:45:00 PM
OW Meeting Request Form outreach.docx

From: Cooper, David R SES USARMY CEHQ (US)

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: FW: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Magruder, DeMara
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/26/2017 3:00:00 PM
End Date/Time: Wed 4/26/2017 4:00:00 PM

Brian is on travel.

From: Magruder, DeMara

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Declined: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/25/2017 5:00:00 PM

End Date/Time: Tue 4/25/2017 6:00:00 PM

Brian is on travel.

From: Shamet, Stefania
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Wehling, Carrie
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Martinez, Maria
Sent: Mon 4/24/2017 10:25:03 PM
Subject: Question Regarding WOTUS-2 Workgroup Coordination

Howdy Donna,

I wanted to follow up with you concerning the WOTUS-2 Workgroup. I was sitting in on the Water Division Director's WOTUS-2 call last Thursday and I thought I had heard you mention that the WOTU-2 workgroup had already started holding calls? Is that correct? If so, my name may not have made it to the workgroup list.

Let me know either way. I just want to make sure I am staying engaged.

Thanks in advance,

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: McCarthy, Julia
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Livingston, Peggy
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Schaller, Andrea
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/24/2017 8:16:28 PM
Subject: RE: Save the Date for R9 RTOC WOTUS presentation

Thanks, Donna!

-----Original Appointment-----

From: Downing, Donna
Sent: Monday, April 24, 2017 4:07 PM
To: Kwok, Rose
Subject: Accepted: Save the Date for R9 RTOC WOTUS presentation
When: Thursday, May 04, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

Thanks, Rose! Yes, we'll need to reschedule the workgroup meeting anyway because of its overlap with the WOTUS presentation.

Just talked with Jason Brush here about the R9 RTOC...

Donna

From: Szalay, Endre
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Downing, Donna
Sent: Mon 4/24/2017 8:15:04 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

Personal Matters / Ex. 6

I'll get back to you upon my return. If you need to contact someone sooner, please email Clay Miller at miller.clay@epa.gov or call him at (202) 566-1365. Thanks!

-- Donna

To: Downing, Donna[Downing.Donna@epa.gov]
From: Downing, Donna
Sent: Mon 4/24/2017 8:15:04 PM
Subject: RE: WOTUS-2 interagency staff meeting

Done!

Donna

-----Original Appointment-----

From: Christensen, Damaris **On Behalf Of** Downing, Donna

Sent: Monday, April 24, 2017 2:49 PM

To: Peterson, Carol; Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores

Cc: Peck, Gregory

Subject: FW: WOTUS-2 interagency staff meeting

When: Occurs every Tuesday effective 4/11/2017 until 7/18/2017 from 1:00 PM to 2:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6



FYI – Donna can you add Carol directly so she gets updates?

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 11:16 AM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn;

Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores

Cc: Peck, Gregory

Subject: WOTUS-2 interagency staff meeting

When: Occurs every Tuesday effective 4/11/2017 until 7/18/2017 from 1:00 PM to 2:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call

Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Lapp, Jeffrey
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Somerville, Eric
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Fontenot, Alison
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Flannery-Keith, Erin
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kupchan, Simma
Sent: Mon 4/24/2017 8:11:03 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

I will return your message when I return.

Thanks,

Simma Kupchan

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Palomaki, Ashley
Sent: Mon 4/24/2017 8:11:03 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I am out of the office April 24th and April 25th. I will return your email when I return to the office on April 26th.

Best,

Ashley

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: New Time Proposed: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Hey Donna -

The RTOC presentation is from 2-3 PM - can we push back the recurring workgroup meeting that day?
Thanks!

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Save the Date for R9 RTOC WOTUS presentation
Start Date/Time: Thur 5/4/2017 6:00:00 PM
End Date/Time: Thur 5/4/2017 7:00:00 PM

Calendar hold for RTOC WOTUS presentation.

Donna – you have the room at this time for the workgroup call, but I think we’ll need to reschedule it that day anyhow so that it doesn’t overlap with the presentation. If someone in senior leadership is attending, we can schedule a different room.

From: Christensen, Damaris
Location: DCRoomWest7301/DC-CCW-OWOW; Telecom
Importance: Normal
Subject: FW: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 5/30/2017 5:00:00 PM
End Date/Time: Tue 5/30/2017 6:00:00 PM

Nonresponsive Conference Code/ Ex. 6

-----Original Appointment-----

From: Downing, Donna
Sent: Friday, April 07, 2017 11:16 AM
To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores
Cc: Peck, Gregory
Subject: WOTUS-2 interagency staff meeting
When: Tuesday, May 30, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: cal

Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Peterson, Carol

Downing, Donna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom



Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/25/2017 5:00:00 PM

End Date/Time: Tue 4/25/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, April 25, 2017 1:00 PM-2:00 PM.

Recipients

Peterson, Carol

Downing, Donna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Christensen, Damaris

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: FW: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

FYI – Donna can you add Carol directly so she gets updates?

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 11:16 AM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Cindy Barger; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores

Cc: Peck, Gregory

Subject: WOTUS-2 interagency staff meeting

When: Occurs every Tuesday effective 4/11/2017 until 7/18/2017 from 1:00 PM to 2:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: cal Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecon; Nonresponsive Conference Code/ Ex. 6



Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Occurs every Tuesday from 1:00 PM to 2:00 PM effective 4/11/2017 until 7/18/2017. There are 13 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Peterson, Carol

Downing, Donna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Nandi, Romell

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Declined: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/25/2017 5:00:00 PM

End Date/Time: Tue 4/25/2017 6:00:00 PM

From: Magruder, DeMara
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in
body of invitation
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/10/2017 3:00:00 PM
End Date/Time: Wed 5/10/2017 4:00:00 PM

Brian is on travel.

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your meeting was forwarded

Wehling, Carrie has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Neugeboren, Steven

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Wehling, Carrie has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Occurs every Tuesday from 1:00 PM to 2:00 PM effective 4/11/2017 until 7/18/2017. There are 13 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Neugeboren, Steven

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your meeting was forwarded

Kupchan, Simma has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Neugeboren, Steven

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Kupchan, Simma has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Occurs every Tuesday from 1:00 PM to 2:00 PM effective 4/11/2017 until 7/18/2017. There are 13 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Neugeboren, Steven

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Peterson, Carol
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Peterson, Carol
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Peterson, Carol
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/26/2017 3:00:00 PM
End Date/Time: Wed 4/26/2017 4:00:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, April 26, 2017 11:00 AM-12:00 PM.

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Occurs every Wednesday from 11:00 AM to 12:00 PM effective 4/12/2017 until 7/19/2017. There are 13 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Occurs every Tuesday from 1:00 PM to 2:00 PM effective 4/11/2017 until 7/18/2017. There are 13 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Schafer, Jeannette has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Horchem, Brad

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 2:30 PM-3:30 PM.

Recipients

Peterson, Carol

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Peterson, Carol

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, April 20, 2017 1:00 PM-2:00 PM.

Recipients

Peterson, Carol

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Peterson, Carol

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your meeting was forwarded

Reid, Darren has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 2:30 PM-3:30 PM.

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

[Reid, Darren](#) has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

[Connors, Sandra](#)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Reid, Darren has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, April 20, 2017 1:00 PM-2:00 PM.

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Reid, Darren has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: McCarthy, Julia
Sent: Thur 4/20/2017 4:03:38 PM
Subject: Automatic reply: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Personal Matters / Ex. 6

Please contact Karen Hamilton at
hamilton.karen@epa.gov if you require assistance before my return.

Thank you,

Julia

To: Downing, Donna[Downing.Donna@epa.gov]
From: Montella, Daniel
Sent: Thur 4/20/2017 4:03:34 PM
Subject: Automatic reply: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

I am out of the office until Monday, April 24, 2017. If you need immediate assistance from the Wetlands Protection Section on Thursday, April 20, please contact Bob Montgomerie at 212-637-3813 or at montgomerie.robert@epa.gov; and on Friday, April 21, please contact Kathleen Drake at 212-637-3817 or at Drake.Kathleen@epa.gov

[illegible]

Daniel Montella

Chief, Wetlands Protection Section

Watershed Management Branch

US Environmental Protection Agency, Region 2

290 Broadway

NY, NY 10007

212-637-3801

212-637-3889 (fax)

[illegible]

To: Downing, Donna[Downing.Donna@epa.gov]
From: Schaller, Andrea
Sent: Thur 4/20/2017 4:03:34 PM
Subject: Automatic reply: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Personal Matters / Ex. 6

I will respond to your email when I return 4/24.

Thank you,

Andrea

To: Downing, Donna[Downing.Donna@epa.gov]
From: Shamet, Stefania
Sent: Thur 4/20/2017 4:03:33 PM
Subject: Automatic reply: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Thank you for your message. I will be out of the office returning Monday, April 24.

Personal Matters / Ex. 6

Personal Matters / Ex. 6

If it's urgent, please

call

Personal Phone / Ex. 6

From: Somerville, Eric
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Sent: Tue 4/18/2017 8:07:07 PM
Subject: RE: Clean Water Rule Conference Call

Thanks. I'll do exactly that. Much appreciated!

Donna

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 3:35 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Clean Water Rule Conference Call

Deliberative Process / Ex. 5

The April 19, 2017 Federalism Consultation meeting on the definition of “Waters of the United States” is not open to the press. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA’s policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” and embark upon rulemaking to define “Water of the U.S.”

From: Downing, Donna
Sent: Tuesday, April 18, 2017 3:14 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: FW: Clean Water Rule Conference Call

Deliberative Process / Ex. 5

Donna

From: Roger Gwinn [<mailto:rgwinn@tfgnet.com>]
Sent: Tuesday, April 18, 2017 12:42 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Clean Water Rule Conference Call

Is there dial-in availability for this meeting?

W Roger Gwinn
The Ferguson Group
1130 Connecticut Avenue, N.W.
Suite 300, Washington, DC 20036
202-261-6006 (Office)
Personal Phone / Ex. 6
202-331-1598 (Fax)
roger.gwinn@thefergusongroup.com

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Nandi, Romell[Nandi.Romell@epa.gov]
From: Balasa, Kate
Sent: Tue 4/18/2017 7:23:27 PM
Subject: RE: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Fantastic! ☺

From: Downing, Donna
Sent: Tuesday, April 18, 2017 2:23 PM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Nandi, Romell <Nandi.Romell@epa.gov>
Subject: RE: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Hi Kate:

We're all set here; I've reserved a room in case we don't fit into John's office. Thanks!

Donna

From: Balasa, Kate
Sent: Tuesday, April 18, 2017 1:42 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Hi Donna,

One quick thing – I just realized that if you all at HQ want to be in the same room for the call, a room will need to be reserved. I don't take care of that for OW folks. I let Romell know, but I

Personal Matters / Ex. 6

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna

Sent: Tuesday, April 18, 2017 11:32 AM

To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Hi Kate:

Deliberative Process / Ex. 5

Please let me know if you have any questions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Balasa, Kate

Sent: Tuesday, April 18, 2017 10:47 AM

To: Downing, Donna <Downing.Donna@epa.gov>

Subject: Your VM

Hi Donna,

Thanks for your call and sorry I missed you.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Best regards,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Tue 4/18/2017 5:41:30 PM
Subject: RE: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Hi Donna,

One quick thing – I just realized that if you all at HQ want to be in the same room for the call, a room will need to be reserved. I don't take care of that for OW folks. I let Romell know, but I

Personal Matters / Ex. 6

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Sent: Tuesday, April 18, 2017 11:32 AM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: One-pager for WOTUS-2 WDD briefing scheduled for 4/20

Hi Kate:

Deliberative Process / Ex. 5

Please let me know if you have any questions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Balasa, Kate
Sent: Tuesday, April 18, 2017 10:47 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Your VM

Hi Donna,

Thanks for your call and sorry I missed you.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Best regards,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: McDavit, Michael W.
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Listening room for staff interested in federalism discussions on WOTUS-2
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

From: DCRoomWest7301/DC-CCW-OWOW
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Listening room for staff interested in federalism discussions on WOTUS-2
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Goodin, John
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/26/2017 3:00:00 PM
End Date/Time: Wed 4/26/2017 4:00:00 PM

From: Weaver, Kerryann
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Yu, Yone
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Melgin, Wendy has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, April 20, 2017 1:00 PM-2:00 PM.

Recipients

Yu, Yone

Weaver, Kerryann

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Cherry, Andrew
Sent: Mon 4/17/2017 10:39:02 PM
Subject: Automatic reply: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

I am out of the office from April 12 - 19. I will reply to your message when I return to the office on April 20th. If you need assistance before I return, please contact Ben Bahk at 202-564-4293.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Hewitt, Julie
Sent: Mon 4/17/2017 10:39:02 PM
Subject: Automatic reply: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

I am out of the office and will respond to your message when I return on Tuesday, April 18th.

From: Goodin, John
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/19/2017 3:00:00 PM
End Date/Time: Wed 4/19/2017 4:00:00 PM

From: Goodin, John

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom 1

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 6:00:39 PM
Subject: RE: Please make a 1-time change to Donna's CD

I'll check your calendars and find the call-in information.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:59 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Yes that would be helpful

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:59 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Let me know if you need me to call in.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:57 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Should we discuss this on the 2:00 with the Corps today?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:27 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

-----Original Message-----

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 1:16 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose

Sent: Monday, April 17, 2017 1:06 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>

Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

-----Original Message-----

From: Kwok, Rose

Sent: Monday, April 17, 2017 12:55 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>

Subject: RE: Please make a 1-time change to Donna's CD

I was waiting to hear back from Stacey on her thoughts before distributing, but here is the draft of the **Deliberative Process / Ex. 5** It looks like Stacey has made some comments, but I have not yet reviewed them.

Nonresponsive Internal URL/ Ex. 6

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:44 PM
To: Johnson, CynthiaN <Johnson.CynthiaN@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Please make a 1-time change to Donna's CD

Hi Cynthia --

Personal Matters / Ex. 6

Thanks!

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 12:36 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: A couple of questions and an FYI

Hi Donna,
I'm fine with you switching your comp day to this Friday.

For Corps meeting today - I have a couple of quick things. Is there anything rule-related to touch on? I haven't seen the **Deliberative Process / Ex. 5**? Also, can you remember when they thought they would hear back from **Deliberative Process / Ex. 5**

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:12 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: A couple of questions and an FYI

Hiya Mindy --

Since you were on the phone when I stuck my head in (twice), I decided it would be less disruptive and

more helpful to send you an email with my couple of questions --
-- when is the meeting with Mike this afternoon for the draft run-through Federalism powerpoint? If possible, I'd be very interested in attending.
-- Are we on with the Corps this afternoon at 2pm?? I don't know of non-WOTUS agenda items, but know you might have some.

Personal Matters / Ex. 6

FYI, I'll be sending an agenda for the Wednesday 10am meeting for your consideration shortly. (First am coordinating with Simma on the preamble).

Thanks for any thoughts you might have!

Donna

-----Original Message-----

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 11:29 AM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Hewitt, Julie <Hewitt.Julie@epa.gov>

Subject: RE: Federalism powerpoint

Hi Simma,

Deliberative Process / Ex. 5

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Message-----

From: Kupchan, Simma

Sent: Monday, April 17, 2017 10:49 AM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>

Subject: RE: Federalism powerpoint

I think the revised version looks good. Thanks for all of your work on this, Damaris and everyone else.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

-----Original Message-----

From: Christensen, Damaris
Sent: Friday, April 14, 2017 10:09 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: Federalism powerpoint

Several sharepoint glitches later, the federalism ppt is up to date. I suggest that this group identify any additional edits by early afternoon Monday, especially focusing on the later (new) slides where

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Here's the link.

Nonresponsive Internal URL/ Ex. 6

Also in the federalism folder shortly will be a draft agenda and a draft run of show. You are welcome to peek at early drafts but I'll send a link around after I've had a chance to touch base with Jake Strickler, who is facilitating, on Monday.

Damaris

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]
Sent: Friday, April 14, 2017 5:05 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>
Subject: Heads up

I'll be sending around a link to review the new content-added federalism PowerPoint in a couple hours.

Personal Matters / Ex. 6

Damaris

Sent from my iPhone

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 5:58:43 PM
Subject: RE: Please make a 1-time change to Donna's CD

Let me know if you need me to call in.

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:57 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Should we discuss this on the 2:00 with the Corps today?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Kwok, Rose
Sent: Monday, April 17, 2017 1:27 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 1:16 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

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To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Please make a 1-time change to Donna's CD

Deliberative Process / Ex. 5

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Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Hi Cynthia --

Personal Matters / Ex. 6

Thanks!

Donna

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Sent: Monday, April 17, 2017 12:36 PM
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For Corps meeting today - I have a couple of quick things. Is there anything rule-related to touch on? I haven't seen the **Deliberative Process / Ex. 5**. Also, can you remember when they thought they would hear back from **Deliberative Process / Ex. 5**

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
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eisenberg.mindy@epa.gov

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Personal Matters / Ex. 6

FYI, I'll be sending an agenda for the Wednesday 10am meeting for your consideration shortly. (First am coordinating with Simma on the preamble).

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Subject: RE: Federalism powerpoint

Hi Simma

Deliberative Process / Ex. 5

Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

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I think the revised version looks good. Thanks for all of your work on this, Damaris and everyone else.

Deliberative Process / Ex. 5

Thanks,

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

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To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: Federalism powerpoint

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Damaris

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]

Sent: Friday, April 14, 2017 5:05 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: Heads up

I'll be sending around a link to review the new content-added federalism PowerPoint in a couple hours.

Personal Matters / Ex. 6

Damaris

Sent from my iPhone

From: Sachs, Erica
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Sachs, Erica
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Sachs, Erica
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Mon 4/17/2017 4:39:04 PM
Subject: Automatic reply: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

I am out of the office on Monday April 17.

I will be checking messages occasionally but if you need immediate assistance, please contact the main Water Law Office at 202-564-7700 and folks will know how to reach me or direct you to someone else who can assist.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Sent: Mon 4/17/2017 4:34:01 PM
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Thanks for the edits; I'll finalize the agenda upward to Crystal (with a cc to Ann in case she'd like to tinker, a cc to the usuals, and to Romell so he's in the loop),

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 12:29 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Hi Donna,
Here are a few edits to the draft agenda. Thanks!

Deliberative Process / Ex. 5

Thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:21 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Hi Mindy --

Attached is a draft agenda for Wednesday's 10am leadership meeting.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have suggested edits or redirections. Thanks!

Donna

Your message is ready to be sent with the following file or link attachments:

Agenda -- WOTUS 19 April 2017 v1.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Wendelowski, Karyn

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Fri 4/14/2017 11:53:07 AM
Subject: Re: adding Corps counsel to the list

That's what I thought but she asked me so she may not know. Thanks for following up.

Sent from my iPhone

> On Apr 13, 2017, at 9:02 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:
>
> Jennifer Moyer has already be added...I'll touch base with Stacey to make sure that she knows how to get access...
>
> -----Original Message-----
> From: Wehling, Carrie
> Sent: Thursday, April 13, 2017 9:01 PM
> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
> Subject: Re: adding Corps counsel to the list
>
> Jennifer asked that she be added too. Thanks.
>
> Sent from my iPhone
>
>> On Apr 13, 2017, at 8:01 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:
>>
>> Thanks that would be great!
>>
>> Sent from my iPhone
>>
>>> On Apr 13, 2017, at 6:43 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:
>>>
>>> We can add him to SharePoint - the Corps just needs to do an extra step to access the Sharepoint site (set up a Microsoft Account with their Corps email addresses, as their accounts with their CAC cards won't work). There are instructions that I can send him, and it should be relatively straight forward.
>>>
>>> -----Original Message-----
>>> From: Eisenberg, Mindy
>>> Sent: Thursday, April 13, 2017 6:41 PM
>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>
>>> Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose
>>> <Kwok.Rose@epa.gov>
>>> Subject: Re: adding Corps counsel to the list
>>>
>>> Happy for David to be looped in.
>>>
>>> Donna or Rose - do we need him to have the kind of access to sharepoint that Stacey had?
>>>
>>> Sent from my iPhone
>>>
>>>> On Apr 13, 2017, at 8:29 AM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:
>>>>

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

>>>> Thanks.
>>>>
>>>> Carrie
>>>>
>>>> Caroline (Carrie) Wehling
>>>> Assistant General Counsel
>>>> Water Law Office
>>>> U.S. Environmental Protection Agency Washington DC 20004
>>>> 202-564-5492
>>>> wehling.carrie@epa.gov
>>>>
>>>> -----Original Message-----
>>>> From: Cooper, David R SES USARMY CEHQ (US)
>>>> [mailto:David.R.Cooper@usace.army.mil]
>>>> Sent: Thursday, April 13, 2017 8:24 AM
>>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>
>>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>>> <Jennifer.A.Moyer@usace.army.mil>
>>>> Subject: RE: Draft documents (UNCLASSIFIED)
>>>>
>>>> CLASSIFICATION: UNCLASSIFIED
>>>>
>>>> Yes, please. Thank you.
>>>>
>>>>
>>>> David Cooper
>>>> Chief Counsel
>>>> U.S. Army Corps of Engineers
>>>> 441 G Street, NW
>>>> Washington, DC 20314
>>>> Office Tel.: 202-761-0018
>>>> Mobile Tel.: 202-494-2987
>>>>
>>>>
>>>> -----Original Message-----
>>>> From: Wehling, Carrie [mailto:Wehling.Carrie@epa.gov]
>>>> Sent: Thursday, April 13, 2017 8:19 AM
>>>> To: Cooper, David R SES USARMY CEHQ (US)
>>>> <David.R.Cooper@usace.army.mil>
>>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>>> <Jennifer.A.Moyer@usace.army.mil>
>>>> Subject: [Non-DoD Source] RE: Draft documents (UNCLASSIFIED)
>>>>

Deliberative Process / Ex. 5

>>>> Thanks.
>>>> Carrie
>>>>
>>>> Caroline (Carrie) Wehling
>>>> Assistant General Counsel
>>>> Water Law Office
>>>> U.S. Environmental Protection Agency Washington DC 20004
>>>> 202-564-5492

>>>> wehling.carrie@epa.gov

>>>>

>>>> -----Original Message-----

>>>> From: Cooper, David R SES USARMY CEHQ (US)

>>>> [mailto:David.R.Cooper@usace.army.mil]

>>>> Sent: Wednesday, April 12, 2017 4:44 PM

>>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>

>>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)

>>>> <Jennifer.A.Moyer@usace.army.mil>

>>>> Subject: FW: Draft documents (UNCLASSIFIED)

>>>>

>>>> CLASSIFICATION: UNCLASSIFIED

>>>>

>>>> Hi Carrie,

>>>>

>>>> Please send me the most recent version of the WOTUS 2 draft rule text and preamble.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

>>>>

>>>>

>>>> David Cooper

>>>> Chief Counsel

>>>> U.S. Army Corps of Engineers

>>>> 441 G Street, NW

>>>> Washington, DC 20314

>>>> Office Tel.: 202-761-0018

>>>> Mobile Tel.: 202-494-2987

>>>>

>>>>

>>>> -----Original Message-----

>>>> From: Moyer, Jennifer A CIV USARMY CEHQ (US)

>>>> Sent: Wednesday, April 12, 2017 4:38 PM

>>>> To: Cooper, David R SES USARMY CEHQ (US)

>>>> <David.R.Cooper@usace.army.mil>

>>>> Subject: Draft documents

>>>>

>>>> Hi David,

>>>>

>>>> The preamble version that Carrie briefed from today is not on the Sharepoint site. I've attached the most recent version (from sometime this morning) that is More of an FYI.

Deliberative Process / Ex. 5

>>>>

>>>> I've attached also a version of rule text, too.

>>>>

>>>> Enjoy.

>>>>

>>>> Jennifer

>>>>

>>>>

>>>> _____
>>>> Jennifer Moyer

>>>> Chief, Regulatory Program

>>>> Headquarters, U.S. Army Corps of Engineers

>>>> 441 G Street, NW

>>>> Washington, DC 20314

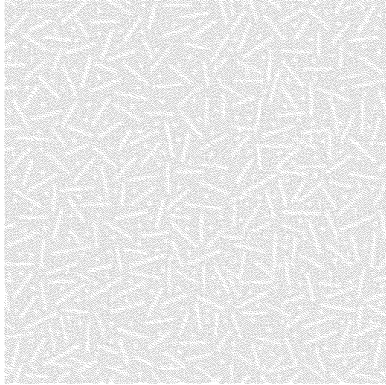
>>>> 202-761-4598 (office)

>>>> 703-589-5746 (mobile)

>>>>

>>>>
>>>> CLASSIFICATION: UNCLASSIFIED
>>>>
>>>> CLASSIFICATION: UNCLASSIFIED
>>>>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Johnson, Terri
Sent: Fri 4/14/2017 11:05:30 AM
Subject: RE: talking points for Benita



Thanks Donna. I'll put a note on my calendar to check in with you just before Rally.

From: Downing, Donna
Sent: Thursday, April 13, 2017 5:53 PM
To: Johnson, Terri <Johnson.Terri@epa.gov>
Subject: RE: talking points for Benita

Hi Terri:

Yeah, we're pretty busy but I did remember your request. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 please find the current set of
talking points. Let's touch base closer to Rally time to make sure the TPs **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Thanks!

Donna

From: Johnson, Terri
Sent: Thursday, April 13, 2017 4:23 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: talking points for Benita

I know you must be crazy busy but if you have a chance to forward the talking points you mentioned for the CWA rule it would help me as I develop talking points for Benita and John

I need to get the first draft off to Surabhi Shah for review then they go to Benita for the briefing.

From: Johnson, Terri
Sent: Wednesday, April 05, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: talking points for Benita

Rally is May 8th – 11th and she will be talking to NGOs, our regions and other Feds.

Thanks Donna

Terri Johnson

EPA- Office of Water

Urban Waters Program

202-564-8296

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Fri 4/14/2017 1:02:21 AM
Subject: RE: adding Corps counsel to the list

Jennifer Moyer has already be added...I'll touch base with Stacey to make sure that she knows how to get access...

-----Original Message-----

From: Wehling, Carrie
Sent: Thursday, April 13, 2017 9:01 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: adding Corps counsel to the list

Jennifer asked that she be added too. Thanks.

Sent from my iPhone

> On Apr 13, 2017, at 8:01 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

>

> Thanks that would be great!

>

> Sent from my iPhone

>

>> On Apr 13, 2017, at 6:43 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

>>

>> We can add him to SharePoint - the Corps just needs to do an extra step to access the Sharepoint site (set up a Microsoft Account with their Corps email addresses, as their accounts with their CAC cards won't work). There are instructions that I can send him, and it should be relatively straight forward.

>>

>> -----Original Message-----

>> From: Eisenberg, Mindy

>> Sent: Thursday, April 13, 2017 6:41 PM

>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>

>> Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose

>> <Kwok.Rose@epa.gov>

>> Subject: Re: adding Corps counsel to the list

>>

>> Happy for David to be looped in.

>>

>> Donna or Rose - do we need him to have the kind of access to sharepoint that Stacey had?

>>

>> Sent from my iPhone

>>

>>> On Apr 13, 2017, at 8:29 AM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:

>>>

Deliberative Process / Ex. 5

>>> Thanks.

>>>

>>> Carrie

>>>

>>> Caroline (Carrie) Wehling
>>> Assistant General Counsel
>>> Water Law Office
>>> U.S. Environmental Protection Agency Washington DC 20004
>>> 202-564-5492
>>> wehling.carrie@epa.gov
>>>
>>> -----Original Message-----
>>> From: Cooper, David R SES USARMY CEHQ (US)
>>> [mailto:David.R.Cooper@usace.army.mil]
>>> Sent: Thursday, April 13, 2017 8:24 AM
>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>
>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>> <Jennifer.A.Moyer@usace.army.mil>
>>> Subject: RE: Draft documents (UNCLASSIFIED)
>>>
>>> CLASSIFICATION: UNCLASSIFIED
>>>
>>> Yes, please. Thank you.
>>>
>>>
>>> David Cooper
>>> Chief Counsel
>>> U.S. Army Corps of Engineers
>>> 441 G Street, NW
>>> Washington, DC 20314
>>> Office Tel.: 202-761-0018
>>> Mobile Tel.: 202-494-2987
>>>
>>>
>>> -----Original Message-----
>>> From: Wehling, Carrie [mailto:Wehling.Carrie@epa.gov]
>>> Sent: Thursday, April 13, 2017 8:19 AM
>>> To: Cooper, David R SES USARMY CEHQ (US)
>>> <David.R.Cooper@usace.army.mil>
>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>> <Jennifer.A.Moyer@usace.army.mil>
>>> Subject: [Non-DoD Source] RE: Draft documents (UNCLASSIFIED)
>>>

Deliberative Process / Ex. 5

>>> Thanks.
>>> Carrie
>>>
>>> Caroline (Carrie) Wehling
>>> Assistant General Counsel
>>> Water Law Office
>>> U.S. Environmental Protection Agency Washington DC 20004
>>> 202-564-5492
>>> wehling.carrie@epa.gov
>>>
>>> -----Original Message-----
>>> From: Cooper, David R SES USARMY CEHQ (US)
>>> [mailto:David.R.Cooper@usace.army.mil]
>>> Sent: Wednesday, April 12, 2017 4:44 PM

>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>
>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>> <Jennifer.A.Moyer@usace.army.mil>
>>> Subject: FW: Draft documents (UNCLASSIFIED)

>>>
>>> CLASSIFICATION: UNCLASSIFIED

>>>
>>> Hi Carrie,

>>> Please send me the most recent version of the WOTUS 2 draft rule text and preamble. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Thanks!

>>>
>>>
>>> David Cooper
>>> Chief Counsel
>>> U.S. Army Corps of Engineers
>>> 441 G Street, NW
>>> Washington, DC 20314
>>> Office Tel.: 202-761-0018
>>> Mobile Tel.: 202-494-2987

>>>
>>>
>>> -----Original Message-----
>>> From: Moyer, Jennifer A CIV USARMY CEHQ (US)
>>> Sent: Wednesday, April 12, 2017 4:38 PM
>>> To: Cooper, David R SES USARMY CEHQ (US)
>>> <David.R.Cooper@usace.army.mil>
>>> Subject: Draft documents

>>>
>>> Hi David,

>>>
>>> The preamble version that Carrie briefed from today is not on the Sharepoint site. I've attached the most recent version (from sometime this morning) that is Deliberative Process / Ex. 5
>>> More of an FYI.

>>>
>>> I've attached also a version of rule text, too.

>>>
>>> Enjoy.

>>>
>>> Jennifer

>>>
>>> _____
>>> Jennifer Moyer
>>> Chief, Regulatory Program
>>> Headquarters, U.S. Army Corps of Engineers
>>> 441 G Street, NW
>>> Washington, DC 20314
>>> 202-761-4598 (office)
>>> 703-589-5746 (mobile)

>>>
>>>
>>> CLASSIFICATION: UNCLASSIFIED
>>>
>>> CLASSIFICATION: UNCLASSIFIED
>>>

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Fri 4/14/2017 1:01:13 AM
Subject: Re: adding Corps counsel to the list

Jennifer asked that she be added too. Thanks.

Sent from my iPhone

> On Apr 13, 2017, at 8:01 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

>

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>

> Sent from my iPhone

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>>

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>> From: Eisenberg, Mindy

>> Sent: Thursday, April 13, 2017 6:41 PM

>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>

>> Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

>> Subject: Re: adding Corps counsel to the list

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>> Sent from my iPhone

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Deliberative Process / Ex. 5

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>>> Thanks.

>>>

>>> Carrie

>>>

>>> Caroline (Carrie) Wehling

>>> Assistant General Counsel

>>> Water Law Office

>>> U.S. Environmental Protection Agency

>>> Washington DC 20004

>>> 202-564-5492

>>> wehling.carrie@epa.gov

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>>> From: Cooper, David R SES USARMY CEHQ (US) [mailto:David.R.Cooper@usace.army.mil]

>>> Sent: Thursday, April 13, 2017 8:24 AM

>>> To: Wehling, Carrie <Wehling.Carrie@epa.gov>
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>>> David Cooper
>>> Chief Counsel
>>> U.S. Army Corps of Engineers
>>> 441 G Street, NW
>>> Washington, DC 20314
>>> Office Tel.: 202-761-0018
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>>>
>>>
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>>> Sent: Thursday, April 13, 2017 8:19 AM
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>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
>>> Subject: [Non-DoD Source] RE: Draft documents (UNCLASSIFIED)
>>>

Deliberative Process / Ex. 5

>>> Thanks.
>>> Carrie
>>>
>>> Caroline (Carrie) Wehling
>>> Assistant General Counsel
>>> Water Law Office
>>> U.S. Environmental Protection Agency
>>> Washington DC 20004
>>> 202-564-5492
>>> wehling.carrie@epa.gov
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>>> -----Original Message-----
>>> From: Cooper, David R SES USARMY CEHQ (US) [mailto:David.R.Cooper@usace.army.mil]
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>>> Cc: Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>
>>> Subject: FW: Draft documents (UNCLASSIFIED)
>>>
>>> CLASSIFICATION: UNCLASSIFIED
>>>
>>> Hi Carrie,
>>>
>>> Please send me the most recent version of the WOTUS 2 draft rule text and preamble.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

>>>
>>>
>>> David Cooper
>>> Chief Counsel

>>> U.S. Army Corps of Engineers
>>> 441 G Street, NW
>>> Washington, DC 20314
>>> Office Tel.: 202-761-0018
>>> Mobile Tel.: 202-494-2987

>>>

>>>

>>> -----Original Message-----

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>>> Sent: Wednesday, April 12, 2017 4:38 PM

>>> To: Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>

>>> Subject: Draft documents

>>>

>>> Hi David,

>>>

>>> The preamble version that Carrie briefed from today is not on the Sharepoint site. I've attached the most recent version (from sometime this morning) that is
More of an FYI.

Deliberative Process / Ex. 5

>>>

>>> I've attached also a version of rule text, too.

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>>> Enjoy.

>>>

>>> Jennifer

>>>

>>>

>>> _____
>>> Jennifer Moyer

>>> Chief, Regulatory Program

>>> Headquarters, U.S. Army Corps of Engineers

>>> 441 G Street, NW

>>> Washington, DC 20314

>>> 202-761-4598 (office)

>>> 703-589-5746 (mobile)

>>>

>>>

>>> CLASSIFICATION: UNCLASSIFIED

>>>

>>> CLASSIFICATION: UNCLASSIFIED

>>>

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Gorke, Roger[Gorke.Roger@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Ruf, Christine
Sent: Thur 4/13/2017 4:35:19 PM
Subject: RE: NWRA and CWA Meeting on April 19th

Including Roger and Ann in this question

From: Christensen, Damaris
Sent: Thursday, April 13, 2017 12:20 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: NWRA and CWA Meeting on April 19th

Deliberative Process / Ex. 5

Damaris

From: Hanson, Andrew
Sent: Thursday, April 13, 2017 12:16 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: NWRA and CWA Meeting on April 19th

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Ian Lyle NWRA [<mailto:ilyle@nwra.org>]

Sent: Thursday, April 13, 2017 11:40 AM

To: Bowles, Jack <Bowles.Jack@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: NWRA and CWA Meeting on April 19th

Hi Jack, Thanks for the quick response and for the additional information looking forward to weighing in during the process.

Andrew, I wanted to provide some additional information on NWRA's membership which could be helpful as you make a determination.

Most of NWRA's membership is made up of local governmental entities that are organized according to state statute and I think make up one of the core demographics you are hoping to hear from in this process.

As an example, irrigation districts are usually subdivisions of local governments whose board members are either directly elected or appointed by county commissioners or the State. Our members on the municipal water side are similarly made up of public entities that are managed as units of local government with elected or appointed boards of directors. We do have a few non governmental members but, as I noted a vast majority of our membership is comprised by local elected officials.

Not sure if this helps clarify our membership but I thought I would provide some additional information. It would be great if we could have a representative of western water supply at the meeting.

Please let me know your thoughts and thanks again to all of you for your assistance.

Best!

Ian

From: "Bowles, Jack" <Bowles.Jack@epa.gov>
Date: Wednesday, April 12, 2017 at 6:36 PM
To: Ian Lyle <ilyle@nwra.org>, "Hanson, Andrew" <Hanson.Andrew@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>
Subject: RE: NWRA and CWA Meeting on April 19th

Hi Ian,

Thank you for reaching out. As we move forward with WOTUS, the agency certainly wants to hear from those stakeholders who are potentially impacted. And over the course of the next several months there will be ample opportunity for stakeholders from all sectors to weigh in.

The Federalism consultation process (which is being kicked off at the April 19th meeting) covers state and local officials and their representative associations. Meeting attendees will be primarily staff of intergovernmental associations whose membership consist exclusively of state and local officials.

It looks like NWRA represents government and non-government individuals and entities. If that is the case, as much as I'd like to give you an answer right now, I think Andrew (our federalism expert) and Donna are going to have to confer and check with our counsel. I am out of the office until next Tuesday, so Andrew will get back to you once there is an answer.

Again, thanks for contacting us, and hopefully we can figure this out.

Best Regards,

Jack Bowles

Director of State & Local Relations

U.S. Environmental Protection Agency

202-564-3657 (office) | **Personal Phone / Ex. 6**

From: Ian Lyle NWRA [<mailto:ilyle@nwra.org>]
Sent: Wednesday, April 12, 2017 5:25 PM
To: Bowles, Jack <Bowles.Jack@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Subject: NWRA and CWA Meeting on April 19th

Hi Jack, Andrew and Donna,

I'm reaching out to see if a representative from the National Water Resources Association (NWRA) could attend the April 19th meeting to discuss the Waters of the US rule on April 19th. NWRA is an association that represents state water associations and local government subdivisions that supply agricultural and municipal water to more than 20 million people in the Western US. As you can imagine our members are very interested in the Rule and have testified on it before both the House Transportation and Infrastructure Committee and the Senate EPW Committee in recent years. We also filed comments on the Rule back in 2014. A copy of our comments are attached for reference.

Appreciate all of your hard work and please let me know if what we can do to have a representative attend the April 19th meeting.

Thanks very much and I look forward to working with you.

Best,

Ian

Ian Lyle

Executive Vice President

National Water Resources Association

ilyle@nwra.org

202-698-0693

Personal Phone / Ex. 6

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
From: Hanson, Andrew
Sent: Thur 4/13/2017 4:25:09 PM
Subject: RE: NWRA and CWA Meeting on April 19th

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Thursday, April 13, 2017 12:20 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: NWRA and CWA Meeting on April 19th

Deliberative Process / Ex. 5

Damaris

From: Hanson, Andrew
Sent: Thursday, April 13, 2017 12:16 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Ruf, Christine
<Ruf.Christine@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Sent: Thursday, April 13, 2017 11:40 AM

To: Bowles, Jack <Bowles.Jack@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>

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Best!

Ian

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Date: Wednesday, April 12, 2017 at 6:36 PM
To: Ian Lyle <ilyle@nwra.org>, "Hanson, Andrew" <Hanson.Andrew@epa.gov>, "Downing, Donna" <Downing.Donna@epa.gov>
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Best Regards,

Jack Bowles

Director of State & Local Relations

U.S. Environmental Protection Agency

202-564-3657 (office) **Personal Phone / Ex. 6**

From: Ian Lyle NWRA [<mailto:ilyle@nwra.org>]
Sent: Wednesday, April 12, 2017 5:25 PM
To: Bowles, Jack <Bowles.Jack@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Subject: NWRA and CWA Meeting on April 19th

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Appreciate all of your hard work and please let me know if what we can do to have a representative attend the April 19th meeting.

Thanks very much and I look forward to working with you.

Best,

Ian

Ian Lyle

Executive Vice President

National Water Resources Association

ilyle@nwra.org

202-698-0693

Personal Phone / Ex. 6

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 4/12/2017 12:53:19 PM
Subject: Re: Quick review

Thanks, Carrie! I just didn't want to trip any wires

Sent from my iPhone

On Apr 12, 2017, at 8:38 AM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, April 11, 2017 9:31 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Quick review

Hi Carrie,

Since Karyn is out, I wanted to run this by you given the current state of administrative play. This sentence is in an ORD paper that I'm reviewing...normally, it wouldn't give me pause, but now I'm not so sure. One thing I will suggest is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Thanks – let me know if you think it is okay.

Deliberative Process / Ex. 5

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 4/12/2017 1:30:55 AM
Subject: Quick review

Hi Carrie,

Since Karyn is out, I wanted to run this by you given the current state of administrative play. This sentence is in an ORD paper that I'm reviewing...normally, it wouldn't give me pause, but now I'm not so sure. One thing I will suggest is c

Deliberative Process / Ex. 5

Thanks – let me know if you think it is okay.

Deliberative Process / Ex. 5

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, April 18, 2017 1:00 PM-2:00 PM.

Recipients

Peck, Gregory

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Peck, Gregory

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Occurs every Tuesday from 1:00 PM to 2:00 PM effective 4/11/2017 until 7/18/2017. There are 14 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Peck, Gregory

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, April 12, 2017 11:00 AM-12:00 PM.

Recipients

Peck, Gregory

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Eisenberg, Mindy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Occurs every Wednesday from 11:00 AM to 12:00 PM effective 4/12/2017 until 7/19/2017. There are 15 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Peck, Gregory

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Livingston, Peggy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Swackhammer, J-Troy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, April 12, 2017 11:00 AM-12:00 PM.

Recipients

Principe, Vanessa

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 4/11/2017 4:10:50 PM
Subject: Fwd: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

Sent from my iPhone

Begin forwarded message:

From: "Swackhammer, J-Troy" <Swackhammer.J-Troy@epa.gov>
Date: April 11, 2017 at 12:07:26 PM EDT
To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Cc: "Downing, Donna" <Downing.Donna@epa.gov>
Subject: RE: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

Deliberative Process / Ex. 5

Troy

From: Christensen, Damaris
Sent: Tuesday, April 11, 2017 11:59 AM
To: Downing, Donna <Downing.Donna@epa.gov>; David.F.Dale@usace.army.mil; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; DCRoomWest7129/DC-CCW-OWOW <DCRoomWest7129@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV

USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max)
CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger
<cindy.s.barger.civ@mail.mil>

Subject: RE: For review and discussion at Tuesday's interagency staff WOTUS meeting:
first draft sentence outline of Step 1 Preamble

Hi, all.

Following is a link to the folder for today's meeting materials

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna

Sent: Monday, April 10, 2017 1:44 PM

To: David.F.Dale@usace.army.mil; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel
<Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin,
John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma
<Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim
<Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann

<Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; DCRoomWest7129/DC-CCW-OWOW <DCRoomWest7129@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi folks:

Deliberative Process / Ex. 5

I'll be in Shepherdstown at the ASWM meeting on Tuesday and Wednesday, but hope to call in for both meetings.

Thanks!

Nonresponsive Internal URL/ Ex. 6

(PS if the link doesn't work, please contact Rose since she is a Sharepoint guru and I'm going to be traveling to West Virginia later this afternoon)

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Swackhammer, J-Troy
Sent: Tue 4/11/2017 4:07:26 PM
Subject: RE: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

Thx Damaris.

Deliberative Process / Ex. 5

Troy

From: Christensen, Damaris
Sent: Tuesday, April 11, 2017 11:59 AM
To: Downing, Donna <Downing.Donna@epa.gov>; David.F.Dale@usace.army.mil; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; DCRoomWest7129/DC-CCW-OWOW <DCRoomWest7129@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>
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Damaris

From: Downing, Donna

Sent: Monday, April 10, 2017 1:44 PM

To: David.F.Dale@usace.army.mil; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; DCRoomWest7129/DC-CCW-OWOW <DCRoomWest7129@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi folks:

Deliberative Process / Ex. 5

I'll be in Shepherdstown at the ASWM meeting on Tuesday and Wednesday, but hope to call in for both meetings.

Thanks!

Nonresponsive Internal URL/ Ex. 6

(PS if the link doesn't work, please contact Rose since she is a Sharepoint guru and I'm going to be traveling to West Virginia later this afternoon)

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

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U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Swackhammer, J-Troy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, April 12, 2017 11:00 AM-12:00 PM.

Recipients

Williams, Doris

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Gude, Karen

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, April 11, 2017 1:00 PM-2:00 PM.

Recipients

Gude, Karen

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Neugeboren, Steven
Sent: Mon 4/10/2017 5:43:50 PM
Subject: Automatic reply: For review and discussion at Tuesday's interagency staff WOTUS meeting:
first draft sentence outline of Step 1 Preamble

Personal Matters / Ex. 6

If you need assistance while I'm out please contact Carrie Wehling at 564-5492. Thanks.

From: Shapiro, Mike
Location: 3233 WJCE Call in
Importance: Normal
Subject: WOTUS Schedule
Start Date/Time: Wed 4/12/2017 9:00:00 PM
End Date/Time: Wed 4/12/2017 9:45:00 PM

Nonresponsive Conference Code/ Ex. 6

Poc Ann Campbell

From: Dale, David F Jr SES CELRD CELRD (US)

Location: DCRoomWest7129/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: [Non-DoD Source] WOTUS-2 interagency staff meeting (UNCLASSIFIED)

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Dale, David F Jr SES CELRD CELRD (US)

Location: DCRoomWest7301/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: [Non-DoD Source] WOTUS-2 interagency staff meeting (UNCLASSIFIED)

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Dale, David F Jr SES CELRD CELRD (US)
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: [Non-DoD Source] Responding to CWR-related 10am meeting requests (UNCLASSIFIED)
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Dale, David F Jr SES CELRD CELRD (US)

Location: DCRoomWest7301/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: [Non-DoD Source] WOTUS-2 interagency staff meeting (UNCLASSIFIED)

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Kwok, Rose

Location: DCRoomWest7129/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Kwok, Rose
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Kwok, Rose
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Williams, Ann
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Theis, Joseph

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: McDavit, Michael W.
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Christensen, Damaris
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Pollins, Mark

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Magruder, DeMara
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Magruder, DeMara

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Magruder, DeMara

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code Ex. 5

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

From: Magruder, DeMara

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

1 Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Nonresponsive Conference Code/ Ex. 6

From: Schaller, Andrea
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: McCarthy, Julia
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Wesson, Dolores

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Wesson, Dolores

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom 1

2 Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: Wesson, Dolores

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

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Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Somerville, Eric
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Flannery-Keith, Erin
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Flannery-Keith, Erin
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Flannery-Keith, Erin

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

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Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Swackhammer, J-Troy
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Ludwig-Monty, Sarah
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Ludwig-Monty, Sarah
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
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Location: DCRoomWest7129/DC-CCW-OWOW
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Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
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Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Auerbach, Daniel

Location: DCRoomWest7129/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

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Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Auerbach, Daniel

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom 1

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Location: DCRoomWest7301/DC-CCW-OWOW; Telecom 1

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End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Hudiburgh, Gary
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Keating, Jim
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Doley, Todd
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Szalay, Endre
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Szalay, Endre
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Shamet, Stefania
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Shamet, Stefania
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Shamet, Stefania
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Keating, Jim
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Fontenot, Alison
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Fontenot, Alison
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

From: Fontenot, Alison
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Melgin, Wendy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: DCRoomWest7301/DC-CCW-OWOW
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Declined: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your request was declined because there are conflicts.

The conflicts are:

Organizer and Time of Conflicting Meeting

Suggs, Darlene - Thursday, June 1, 2017 2:01:00 PM to Thursday, June 1, 2017 3:01:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

From: Melgin, Wendy
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Livingston, Peggy
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: DCRoomWest7301/DC-CCW-OWOW
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Declined All: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting request was declined because there are conflicts.

Organizer and Time of Conflicting Meeting

Reems, Shera - Thursday, May 4, 2017 9:30:00 AM to Thursday, May 4, 2017 2:00:00 PM

Holdsworth, Susan - Thursday, June 1, 2017 1:00:00 PM to Thursday, June 1, 2017 2:00:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Montella, Daniel
Sent: Fri 4/7/2017 3:59:37 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I am out of the office until 4-10-17. If you need assistance from the Wetlands Protection Section on 4-7-17 please contact Bob Montgomerie at 212-637-3813 or at Montgomerie.Robert@epa.gov

[illegible]

Daniel Montella

Chief, Wetlands Protection Section

Watershed Management Branch

US Environmental Protection Agency, Region 2

290 Broadway

NY, NY 10007

212-637-3801

212-637-3889 (fax)

[illegible]

To: Downing, Donna[Downing.Donna@epa.gov]
From: Dean, Heather
Sent: Fri 4/7/2017 3:59:37 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I will be out of the office until Monday, 10 April.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Fri 4/7/2017 3:59:37 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I am out of the office until Monday, April 10, 2017. I will respond to your message when I return.

Thank you,
Kate Balasa

From: Christensen, Damaris

Location: DCRoomWest7301/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: Christensen, Damaris

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Christensen, Damaris

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

From: Keating, Jim

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: Ludwig-Monty, Sarah

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: Ludwig-Monty, Sarah

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

12:00 PM

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

From: Pollins, Mark

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: DCRoomWest7301/DC-CCW-OWOW

Location: DCRoomWest7301/DC-CCW-OWOW; Telecon Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Doley, Todd

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: DCRoomWest7301/DC-CCW-OWOW

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Declined: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/18/2017 5:00:00 PM

End Date/Time: Tue 4/18/2017 6:00:00 PM

Your request was declined because there are conflicts.

The conflicts are:

Organizer and Time of Conflicting Meeting

Murphy, Margaret - Tuesday, April 18, 2017 12:30:00 PM to Tuesday, April 18, 2017 2:30:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

From: Swackhammer, J-Troy

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6, access Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

access

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Declined All: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting request was declined because there are conflicts.

Organizer and Time of Conflicting Meeting


Murphy, Margaret - Tuesday, April 18, 2017 12:30:00 PM to Tuesday, April 18, 2017 2:30:00 PM

Murphy, Margaret - Tuesday, May 30, 2017 12:30:00 PM to Tuesday, May 30, 2017 2:30:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom , access 

Importance: Normal

Subject: Declined All: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Your meeting request was declined.

The end date of this series of repeating meetings is too far in the future. This resource can only be scheduled up to 720 days in advance. The end date must be before 3/29/2019.

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Theis, Joseph
Sent: Fri 4/7/2017 3:16:21 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

Thank you for your message. I will be out of the office until Monday, April 10. If you need to speak to someone immediately, please contact Ben Bahk at (202)564-4293. Thank you, Joe

To: Downing, Donna[Downing.Donna@epa.gov]
From: Pollins, Mark
Sent: Fri 4/7/2017 3:16:22 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I am out of the office on Friday, April 7. Ben Bahk will be acting division director.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Wendelowski, Karyn
Sent: Fri 4/7/2017 3:16:21 PM
Subject: Automatic reply: WOTUS-2 interagency staff meeting

I am out of the office until Monday April 17th. **Personal Matters / Ex. 6** If you need assistance, please contact Carrie Wehling at 564-5492..

From: Peterson, Carol
Importance: Normal
Subject: help w/WOTUS
Start Date/Time: Wed 4/12/2017 5:00:00 PM
End Date/Time: Wed 4/12/2017 5:30:00 PM

Mindy,

I'm meeting w/Jim Mon. afternoon to get his OK.

Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
Sent: Tue 3/28/2017 6:31:58 PM
Subject: FW: People on Wednesday WOTUS meetings

Hi Mindy --

Damaris has asked Crystal to add the OGWDW and 311 management to the Wednesday 10am meeting.

Donna

-----Original Message-----

From: Christensen, Damaris
Sent: Tuesday, March 28, 2017 12:38 PM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>
Subject: Re: People on Wednesday WOTUS meetings

Thanks!

Sent from my iPhone

> On Mar 28, 2017, at 12:32 PM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:
>
> All added.
>
> -----Original Message-----
> From: Christensen, Damaris
> Sent: Tuesday, March 28, 2017 12:27 PM
> To: Penman, Crystal <Penman.Crystal@epa.gov>
> Cc: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Downing, Donna
> <Downing.Donna@epa.gov>
> Subject: People on Wednesday WOTUS meetings
>
> Crystal,
>
> Can you please add the following three people to the recurring WOTUS meeting in wednesdays?
>
>
> Brian d'Amico - OGWDW
> OLEM Acting AA: Barry Breen
> OLEM-OEM Office Director: Reggie Cheatham
>
> Thanks,
>
> Damaris
>
> Sent from my iPhone

Dear Colleague:

I am writing you to invite you to engage with the Environmental Protection Agency, the Department of Army and the Army Corps of Engineers on the Clean Water Act "Waters of the U.S." rulemaking.

The February 28th Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the 'Waters of the United States' Rule" directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious approach, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and re-codify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of "waters of the U.S." consistent with direction in the February 28, 2017 E.O.

EPA initiated federalism consultation on April 19 and tribal consultation on April 20, regarding the new definition that will be developed under the second rulemaking. These consultation periods end June 19 and 20, respectively.

While the agencies are reviewing these formal comments, we would also like to hear from your organizations. We are planning a listening session for the Western States Water Council (WSWC) on June 2, 2017, from 2:00 pm to 3:00 pm EDT/noon to 1:00 pm MDT. This will be a webinar

Nonresponsive Internal URL/ Ex. 6

call in **Nonresponsive Conference Code/ Ex. 6** Conference ID

Nonresponsive Conference Code/ Ex. 6 Please let us know if you will be able to attend the webinar by contacting Kathy Hurd in EPA's Office of Wetlands, Oceans, and Watersheds at hurd.kathy@epa.gov or 202-566-1269 or Roger Gorke at gorke.roger@epa.gov or 202-591-5680. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although any discussions and written materials would be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.

Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

Dear Colleague:

I am writing you to invite you to engage with the Environmental Protection Agency, the Department of Army and the Army Corps of Engineers on the Clean Water Act "Waters of the U.S." rulemaking.

The February 28th Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the 'Waters of the United States' Rule" directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious approach, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and re-codify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of "waters of the U.S." consistent with direction in the February 28, 2017 E.O.

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While the agencies are reviewing these formal comments, we would also like to hear from your organizations. We are planning a listening session for the Western States Water Council (WSWC) on June 2, 2017, from 2:00 pm to 3:00 pm EDT/noon to 1:00 pm MDT. This will be a webinar

Nonresponsive Internal URL/ Ex. 6 call in **Nonresponsive Conference Code/ Ex. 6** Conference ID **Nonresponsive Conference Code/ Ex. 6** Please let us know if you will be able to attend the webinar by contacting Kathy Hurd in EPA's Office of Wetlands, Oceans, and Watersheds at hurd.kathy@epa.gov or 202-566-1269 or Roger Gorke at gorke.roger@epa.gov or 202-591-5680. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although any discussions and written materials would be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.
Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

Dear Colleague:

I am writing you to invite you to engage with the Environmental Protection Agency, the Department of Army and the Army Corps of Engineers on the Clean Water Act "Waters of the U.S." rulemaking.

The February 28th Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the 'Waters of the United States' Rule" directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious approach, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and recodify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of "waters of the U.S." consistent with direction in the February 28, 2017 E.O.

EPA initiated federalism consultation on April 19 and tribal consultation on April 20, regarding the new definition that will be developed under the second rulemaking. These consultation periods end June 19 and 20, respectively.

While the agencies are reviewing these formal comments, we would also like to hear from your organizations. We are planning a listening session for the Association of State Wetland Managers on June 6, 2017, from 2:00 pm – 3:00 pm Eastern. If you wish to join the session, please register at: **Nonresponsive Internal URL/ Ex. 6** If you have any questions, or if you will be able to attend in person, please contact Kathy Hurlb in EPA's Office of Wetlands, Oceans, and Watersheds at hurlb.kathy@epa.gov or 202-566-1269. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although any discussions and written materials would be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.
Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

Meeting with the ASWM

June 6, 2017

2:00-3:00 pm Eastern

Nonresponsive Internal URL/ Ex. 6

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 5 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov.

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

For Additional Information

Please visit our new website at:

◦ <https://www.epa.gov/wotus-rule>

Dear Intergovernmental Association Colleague:

I am writing to invite you and your members to engage with the Environmental Protection Agency, the Department of Army and the Army Corps of Engineers on the Clean Water Act “Waters of the U.S.” rulemaking.

The February 28th Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by reviewing the ‘Waters of the United States’ Rule” directs the EPA and the Department of the Army to review the final Clean Water Rule published in 2015 and publish for notice and comment a proposed rule rescinding or revising the rule. To meet the objectives of the EO in a clear and expeditious manner, the agencies have decided on a two-step approach: 1) an initial rulemaking to rescind the 2015 rule and re-codify the regulatory approach that has been in place for decades, and thus maintains the status quo; and 2) a rulemaking to revise the definition of “waters of the U.S.” consistent with direction in the February 28, 2017 E.O.

EPA initiated federalism consultation on April 19 and tribal consultation on April 20, regarding the new definition that will be developed under the second rulemaking. These consultation periods end June 19 and 20, respectively.

While the agencies are reviewing these pre-proposal comments, we would also like to hear from your organizations’ members. We are planning a listening session for the Interstate Oil and Gas Compact Commission and the Association of State Floodplain Managers on June 7, 2017, from 2:00 pm to 3:00 pm Eastern Daylight Time. This will be a webinar accessible via

Nonresponsive Internal URL/ Ex. 6

with a call-in number of **Nonresponsive Conference Code/ Ex. 6** conference

Please let us know if you will be able to attend the webinar by contacting Kathy Hurld in EPA’s Office of Wetlands, Oceans, and Watersheds at hurld.kathy@epa.gov or 202-566-1269, or Hanson.Andrew@epa.gov. I have attached a PPT that we will use during this meeting that provides a discussion of potential options for the revised definition as well as areas for which we are seeking early input.

Although discussions at these briefings materials will be summarized for the proposed rulemaking docket, we anticipate that individual states will submit their own written comments as part of the federalism consultation.

This will not be your only opportunity to engage with the agencies. You will also have an opportunity to provide comments on the proposed step 2 rule during the formal notice and comment process.

Sincerely,

/S/

Mindy Eisenberg, Acting Director
Oceans, Wetlands and Communities Division
USEPA

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting
Webinar with IOGCC and ASFPM
June 7, 2017
2-3 pm Eastern

Call in Number:

Nonresponsive Conference Code/ Ex. 6

Conference ID

Nonresponsive Conference Code/ Ex. 6

WEBINAR URL:

Nonresponsive Internal URL/ Ex. 6

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
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Current practice
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Contacts

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Donna Downing

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Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

For Additional Information

Please visit our new website at:

◦ <https://www.epa.gov/wotus-rule>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/9/2017 2:40:10 PM
Subject: FW: [Non-DoD Source] RE: congressional briefing.pptx

Again resending - same chain,

Deliberative Process / Ex. 5

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Monday, June 05, 2017 1:21 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: [Non-DoD Source] RE: congressional briefing.pptx

Deliberative Process / Ex. 5

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]
Sent: Monday, June 05, 2017 12:52 PM
To: Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: [Non-DoD Source] RE: congressional briefing.pptx

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Deliberative Process / Ex. 5

I've made everyone's changes and put on the sharepoint site.

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Damaris

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [Caution-mailto:cindy.s.barger.civ@mail.mil]
Sent: Monday, June 05, 2017 12:32 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: [Non-DoD Source] RE: congressional briefing.pptx

Hi Damaris - I only had two small edits on slide 6 (in red).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!
Cindy

PRE-DECISIONAL/FOR OFFICIAL USE ONLY/NOT FOR DISTRIBUTION.

-----Original Message-----

From: Christensen, Damaris [Caution-mailto:Christensen.Damaris@epa.gov]
Sent: Thursday, June 01, 2017 12:29 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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From: Wehling, Carrie
Sent: Thursday, June 01, 2017 9:37 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores
<Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn
<wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV
USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: congressional briefing.pptx

Deliberative Process / Ex. 5

Thanks.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov < Caution-Caution-mailto:wehling.carrie@epa.gov >

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 12:57 AM
To: Downing, Donna <Downing.Donna@epa.gov < Caution-Caution-mailto:Downing.Donna@epa.gov >
>; Kwok, Rose <Kwok.Rose@epa.gov < Caution-Caution-mailto:Kwok.Rose@epa.gov > >; Wesson,
Dolores <Wesson.Dolores@epa.gov < Caution-Caution-mailto:Wesson.Dolores@epa.gov > >; Kupchan,
Simma <Kupchan.Simma@epa.gov < Caution-Caution-mailto:Kupchan.Simma@epa.gov > >; Wehling,
Carrie <Wehling.Carrie@epa.gov < Caution-Caution-mailto:Wehling.Carrie@epa.gov > >; Wendelowski,
Karyn <wendelowski.karyn@epa.gov < Caution-Caution-mailto:wendelowski.karyn@epa.gov > >; Cindy
Barger <cindy.s.barger.civ@mail.mil < Caution-Caution-mailto:cindy.s.barger.civ@mail.mil > >; Jensen,
Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil < Caution-Caution-
mailto:Stacey.M.Jensen@usace.army.mil > >
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov < Caution-Caution-mailto:Eisenberg.Mindy@epa.gov
> >
Subject: congressional briefing.pptx

All, in this morning's (Wednesday's) political meeting, EPA's Congressional liaison Denis Borum
indicated

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/9/2017 2:38:54 PM
Subject: FW: congressional briefing.pptx
WOTUS part 1.congressional briefing sak.pptx

Resending so you don't have to search

From: Kupchan, Simma
Sent: Friday, June 02, 2017 3:57 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: congressional briefing.pptx

Deliberative Process / Ex. 5

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Wehling, Carrie
Sent: Thursday, June 01, 2017 9:37 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: congressional briefing.pptx

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

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Water Law Office

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wehling.carrie@epa.gov

From: Christensen, Damaris

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Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: congressional briefing.pptx

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Borum indicated

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/9/2017 2:37:37 PM
Subject: RE: Efforts to review Congress'l poweroint...

Deliberative Process / Ex. 5

Dennis – you were copied on those emails last week I think.

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna
Sent: Friday, June 09, 2017 10:36 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Efforts to review Congress'l poweroint...

Great, thanks.

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, June 09, 2017 10:29 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Efforts to review Congress'l poweroint...

Deliberative Process / Ex. 5

The new version is in the same folder if you want to look at it anyway. Stacey or someone renamed it WOTUS part 1.congressional briefings.

Damaris

Sent from my iPhone

On Jun 9, 2017, at 10:25 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Thanks, it worked (although I used powerpoint, not excel...) Another present brought to you by Windows 10.

Deliberative Process / Ex. 5

Donna

From: Christensen, Damaris
Sent: Thursday, June 08, 2017 7:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: Efforts to review Congress'l powerpoint...

You just open it, accept there's a problem, and then open in excel from the drop down menu. This has been a long running issue with all the power points we've put on sharepoint.

Sent from my iPhone

On Jun 8, 2017, at 5:11 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Damaris –

FYI, I tried to open the Congressional powerpoint under outreach/federal, but three times got error messages. It could be my computer, it could be a temporary glitch with Sharepoint, or it could be gremlins. I'll try again tomorrow morning and will let you know when I'm done.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 6/9/2017 2:28:36 PM
Subject: Re: Efforts to review Congress'l poweroint...

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USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Hurlid, Kathy[Hurlid.Kathy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Gorke, Roger
Sent: Thur 6/8/2017 4:31:10 PM
Subject: RE: WGA PPT and phone number
federalism WGA ppt 6-8-17final.pptx

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

From: Downing, Donna
Sent: Thursday, June 08, 2017 9:20 AM
To: Gorke, Roger <Gorke.Roger@epa.gov>
Cc: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WGA PPT and phone number

Hi Roger -- You resent the .pdf of the presentation, which I already had from the invitation. I could use the POWERPOINT version, not a .pdf, so that I could put in notes. Otherwise, I need to hand-write my notes on the bottom of the .pdf pages and that's l-o-t-s slower. Do you have the powerpoint to share?

Thanks!

Donna

From: Gorke, Roger
Sent: Thursday, June 08, 2017 11:42 AM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WGA PPT and phone number

Sorry for the delay...stupid computer...(and computer user)

Conference ID

Nonresponsive Conference Code/ Ex. 6

Leader Toll-Free Dial-In Number:

Nonresponsive Conference Code/ Ex. 6

Participant Toll Free Dial-In Number:

Nonresponsive Conference Code/ Ex. 6

Roger Gorke

Senior Policy Advisor

Office of Water – Washington, DC/Region 9 – Southern California Field Office

U.S. Environmental Protection Agency

213-244-1853

gorke.roger@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Swackhammer, J-Troy
Sent: Thur 6/8/2017 3:59:29 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hey Donna, is this meeting on today?

-----Original Appointment-----

From: Downing, Donna

Sent: Tuesday, May 23, 2017 1:45 PM

To: Kwok, Rose; Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Stefania Shamet; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Peter Stokely; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Rose Kwok; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; James Morgan; Moffatt, Brett; Feinmark, Phyllis; Kovac, Steve

Cc: Swackhammer, J-Troy; Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen; Alexander, Laurie; Goodwin, Kara

Subject: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Gude, Karen
Sent: Thur 6/8/2017 2:58:50 PM
Subject: R1 RTOC 6/14 WOTUS Request

Rose,

Hi. Following up the request received during the NTC call yesterday for additional outreach to the R1 RTOC on WOTUS, Mike Stover (the R1 Regional Indian Coordinator) has indicated that their RTOC meeting is scheduled for Wednesday, June 14 from 10-11 AM . (I apologize for not being able to flag this sooner; R1's RTOC info wasn't included on AIEO's tribal calendar.)

Understanding that you will be at NCAI that day, I wanted to see if there might be someone available to cover the presentation/discussion. (We're really running out of Regions, I promise!)

I am checking with Mike to be sure, but anticipate that we'd probably be shooting for a 20 minute-type presentation, as I have to imagine that there are other items on the agenda.

Thanks for your consideration; I'm cc'ing Donna and Damaris as FYI.

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Stover, Michael
Sent: Thursday, June 08, 2017 10:42 AM
To: Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: Touching Base on WOTUS Outreach Request

Hello Karen,

Our next RTOC meeting is next Wed June 14 and we have availability within the 10-11 hour. Would it be possible for you or someone to come on this call and provide that outreach session?

Thanks!

Mike Stover

From: Gude, Karen
Sent: Thursday, June 08, 2017 9:03 AM
To: Stover, Michael <Stover.Michael@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Touching Base on WOTUS Outreach Request

Mike,

Hi. I am following up to a voice mail message that I just left for you, in case it is easier/preferable to catch up with you via email. At yesterday's NTC Monthly meeting/call, OW had been asked to provide some additional information/outreach to the NTC on our forthcoming rulemaking to redefine waters of the U.S. Following our presentation during the group discussion, I was asked (and I'm sorry, I didn't catch the name of the person who made the ask) whether it might be possible to hold an outreach session on WOTUS at an upcoming R1 RTOC meeting/call. (We have done similar outreach sessions at several other RTOCs recently.)

I just wanted to reach out and offer that we would be happy to work with you to schedule an outreach session as part of an upcoming R1 RTOC, if that would be something the RTOC members would be interested in. While the tribal consultation period is scheduled to end on June 20, we plan to continue tribal outreach beyond this date. I'm cc'ing Rose Kwok, who is our

programmatic lead for WOTUS tribal consultation, for awareness. If you would like to talk further, please just let me know.

Thank you,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Gude, Karen[Gude.Karen@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Allen, Mark[Allen.Mark@epa.gov]; pstout@sfpueblo.com[pstout@sfpueblo.com]
From: Gee, Randy
Sent: Wed 6/7/2017 7:24:36 PM
Subject: Tribal Attendance List for Region 6 June 7 RTOC Conference Call
[Tribal Attendance List for June 2017 RTOC Conference Call.docx](#)

Thank you Karen, Rose and Donna for providing an update on the Waters of the United States issue. We may discuss the issue further at our July 12 RTOC meeting and if so, would invite you to be part of the discussion. We would have a conference line available.

Attached is the attendance list for yesterday's call. The Pueblo/Tribal Nation name is on the left, and the call representative is on the right side. If the right side is blank then the Pueblo/Tribal Nation did not join the call.

I didn't include the EPA representatives that were on the call. If you need that info or have questions please let me know.

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Hurlid, Kathy[Hurlid.Kathy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Gude, Karen
Sent: Wed 6/7/2017 1:16:06 PM
Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

Great. Again, thanks, all!!

Damaris, I added you and Rose to the NTWC meeting invitation (I think that you might have already be on the invite list), so that you'll have it on your calendar and receive agendas/any updates as they become available.

Karen

From: Christensen, Damaris
Sent: Wednesday, June 07, 2017 9:13 AM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>
Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

Great. So...

Karen, 2:15 for National Tribal Water Council sounds fine

Rose, we should add these NTWC and NTC meetings to our tribal outreach "list" – and can you copy Carol on that? Thanks.

Deliberative Process / Ex. 5

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Subject: Re: WOTUS Updates for 6/14 NTWC Monthly Call

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Sent from my iPhone

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I can be flexible on timing/agenda for the call. I don't anticipate it would be more than about 15-20 minutes of someone's time. Given that you are out of the office, I am cc'ing Donna and Damaris, for awareness.

Thank you,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Gude, Karen

Sent: Tuesday, June 06, 2017 10:37 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Subject: WOTUS Updates for 6/14 NTWC Monthly Call

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Thanks!

Karen
(202) 564-0831

Subject: National Tribal Water Council - EPA Monthly Call

Location:

Nonresponsive Conference Code/ Ex. 6

DCRoomEast2369B/DC-ICC-OW-IO; Call in:

Nonresponsive Conference Code/ Ex. 6

Start: Wed 6/14/2017 2:00 PM

End: Wed 6/14/2017 3:30 PM

Recurrence: Monthly

Recurrence Pattern: the second Wednesday of every 1 month(s) from 2:00 PM to 3:30 PM

Meeting Status: Meeting organizer

Organizer: Gude, Karen

Required Attendees: Russell, Sam; Williams, James; Hall, Beth; Lopez-Carbo,

Maria; Buffo, Corey; Anderson, Danielle; Leutner, Fred; Ruge, Zoe; Bathersfield, Nizanna; Hudiburgh, Gary; Delehanty, Robyn; Stabenfeldt, Lynn; Chemerys, Ruth; Epting, Steve; Holdsworth, Susan; Shumway, Laura; Kutschenreuter, Kathleen; Christensen, Damaris; Soscia, Marylou; Gardner, Thomas; Binder, Jonathan; Jonesi, Fran; Pamela Blasdell; kenpnorton@gmail.com; michbolt@nc-chokeee.com; dan.kusnierz@penobscotnation.org; rrickard@hetf.org; nancyschuldt@fdlrez.com; memarthla@sctibe.com; Denise Jensen; clarrick@utemountain.org; emorrison-dia@gci.net; acabillo@hotmail.com; philc@cdatribe-nsn.gov; slivermore@pci-nsn.gov; jamesh@nezperce.org; Temple, Leslie; Davis, CatherineM; Richardson, Matthew; Negash, Lily

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Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number: Nonresponsive Conference Code/ Ex. 6

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]
From: Hurl, Kathy
Sent: Wed 6/7/2017 1:13:26 PM
Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

I get it, that is why I won't be talking! ;-)

From: Christensen, Damaris
Sent: Wednesday, June 07, 2017 9:13 AM
To: Hurl, Kathy <Hurl.Kathy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
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U.S. EPA/Office of Water

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Subject: National Tribal Water Council - EPA Monthly Call

Location: DCRoomEast2369B/DC-ICC-OW-IO; Call in: Nonresponsive Conference Code/ Ex. 6
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Personal Email / Ex. 6 michbolt@nc-chokeee.com; dan.kusnierz@penobscotnation.org; rrickard@hetf.org; nancyschuldt@fdlrez.com; memarthla@sctribe.com; Denise Jensen; clarrick@utemountain.org; emorrison-dia@gci.net; **Personal Email / Ex. 6** philc@cdatribe-nsn.gov; slivernore@pci-nsn.gov; jamesh@nezperce.org; Temple, Leslie; Davis, CatherineM; Richardson, Matthew; Negash, Lily

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Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number **Nonresponsive Conference Code/ Ex. 6**

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Nonresponsive Conference Code/ Ex. 6

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Personal Email / Ex. 6 michbolt@nc-cherokee.com; dan.kusnierz@penobscotnation.org; rrickard@hetf.org; nancyschuldt@fdlrez.com; memarthla@sctribe.com; Denise Jensen; clarrick@utemountain.org; emorrison-dia@gci.net; **Personal Email / Ex. 6** philc@cdatribe-nsn.gov; slivermore@pci-nsn.gov; jamesh@nezperce.org; Temple, Leslie; Davis, CatherineM; Richardson, Matthew; Negash, Lily

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To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: WOTUS Updates for 6/14 NTWC Monthly Call

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Sent: Wednesday, June 07, 2017 8:36 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

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Thank you,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Gude, Karen

Sent: Tuesday, June 06, 2017 10:37 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Subject: WOTUS Updates for 6/14 NTWC Monthly Call

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Thanks!

Karen
(202) 564-0831

Subject: National Tribal Water Council - EPA Monthly Call

Location: DCRoomEast2369B/DC-ICC-OW-IO; Call in:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Start: Wed 6/14/2017 2:00 PM

End: Wed 6/14/2017 3:30 PM

Recurrence: Monthly

Recurrence Pattern: the second Wednesday of every 1 month(s) from 2:00 PM to 3:30 PM

Meeting Status: Meeting organizer

Organizer: Gude, Karen

Required Attendees: Russell, Sam; Williams, James; Hall, Beth; Lopez-Carbo, Maria; Buffo, Corey; Anderson, Danielle; Leutner, Fred; Ruge, Zoe; Bathersfield, Nizanna; Hudiburgh, Gary; Delehanty, Robyn; Stabenfeldt, Lynn; Chemerys, Ruth; Epting, Steve; Holdsworth, Susan; Shumway, Laura; Kutschenreuter, Kathleen; Christensen, Damaris; Soscia, Marylou; Gardner, Thomas; Binder, Jonathan; Jonesi, Fran; Pamela Blasdel;

Personal Email / Ex. 6 michbolt@nc-chokeee.com; dan.kusnierz@penobscotnation.org; rickard@hetf.org; nancyschuldt@fdlrez.com; memarthla@sctribe.com; Denise Jensen; clarrick@utemountain.org; emorrison-dia@gci.net; **Personal Email / Ex. 6** philc@cdatribe-nsn.gov; slivermore@pci-nsn.gov; jamesh@nezperce.org; Temple, Leslie; Davis, CatherineM; Richardson, Matthew; Negash, Lily

Optional Attendees: Upton, Jennifer; Nasir, Iqra

Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number: **Deliberative Process / Ex. 5**

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
Cc: Hurl, Kathy[Hurl.Kathy@epa.gov]
From: Gude, Karen
Sent: Wed 6/7/2017 12:55:53 PM
Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

Damaris/All,

Thanks so much for working to accommodate the NTWC request. I can front load the WOTUS on the agenda, immediately after intros and the NTWC report out...So, likely starting about 2:15.

Karen

(202) 564-0831

From: Christensen, Damaris
Sent: Wednesday, June 07, 2017 8:54 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>
Subject: RE: WOTUS Updates for 6/14 NTWC Monthly Call

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Subject: National Tribal Water Council - EPA Monthly Call

Location: DCRoomEast2369B/DC-ICC-OW-IO; Call in: 8
Nonresponsive Conference Code/ Ex. 6

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End: Wed 6/14/2017 3:30 PM

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Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number: § Nonresponsive Conference Code/ Ex. 6

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]; Hurd, Kathy[Hurd.Kathy@epa.gov]
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Subject: National Tribal Water Council - EPA Monthly Call

Location:

Nonresponsive Conference Code/ Ex. 6

DCRoomEast2369B/DC-ICC-OW-IO; Call in:

Nonresponsive Conference Code/ Ex. 6

Start:

Wed 6/14/2017 2:00 PM

End:

Wed 6/14/2017 3:30 PM

Recurrence:

Monthly

Recurrence Pattern:

the second Wednesday of every 1 month(s) from 2:00 PM to 3:30 PM

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Meeting organizer

Organizer:

Gude, Karen

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Upton, Jennifer; Nasir, Iqra

Resources:

DCRoomEast2369B/DC-ICC-OW-IO

Conference Number:

Nonresponsive Conference Code/ Ex. 6

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Cc: Gude, Karen[Gude.Karen@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
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Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number: Nonresponsive Conference Code/ Ex. 6

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Cc: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Wed 6/7/2017 12:44:09 PM
Subject: Re: WOTUS Updates for 6/14 NTWC Monthly Call

Thanks, Karen. Cindy and I will likely be on the road by then to head back to the airport. Donna, would you be able to cover? We probably just need the time of when we'd be on the agenda?

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Meeting Status: Meeting organizer

Organizer: Gude, Karen

Required Attendees: Russell, Sam; Williams, James; Hall, Beth; Lopez-Carbo, Maria; Buffo, Corey; Anderson, Danielle; Leutner, Fred; Ruge, Zoe; Bathersfield, Nizanna; Hudiburgh, Gary; Delehanty, Robyn; Stabenfeldt, Lynn; Chemerys, Ruth; Epting, Steve; Holdsworth, Susan; Shumway, Laura; Kutschenreuter, Kathleen; Christensen, Damaris; Soscia, Marylou; Gardner, Thomas; Binder, Jonathan; Jonesi, Fran; Pamela Blasdel; kenpnorton@gmail.com; michbolt@nc-cherokee.com; dan.kusnierz@penobscotnation.org; rickard@hetf.org; nancyschuldt@fdlrez.com; memarthla@sctribe.com; Denise Jensen; clarrick@utemountain.org; emorrison-dia@gci.net; acabillo@hotmail.com; philc@cdatribe-nsn.gov; slivermore@pci-nsn.gov; jamesh@nezperce.org; Temple, Leslie; Davis, CatherineM; Richardson, Matthew; Negash, Lily

Optional Attendees: Upton, Jennifer; Nasir, Iqra

Resources: DCRoomEast2369B/DC-ICC-OW-IO

Conference Number: Nonresponsive Conference Code/ Ex. 6

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW; Telecon

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 6/6/2017 5:00:00 PM

End Date/Time: Tue 6/6/2017 6:00:00 PM

Your meeting was forwarded

Keating, Jim has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, June 6, 2017 1:00 PM-2:00 PM.

Recipients

Swackhammer, J-Troy

Peck, Gregory

Stacey.M.Jensen@usace.army.mil

Wendelowski, Karyn

Goodin, John

Wehling, Carrie

Campbell, Ann

Hewitt, Julie

Neugeboren, Steven

Cherry, Andrew

Peterson, Carol

David.F.Dale@usace.army.mil

Pollins, Mark

Ludwig-Monty, Sarah

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Gude, Karen
Sent: Tue 6/6/2017 4:08:20 PM
Subject: FW: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

From: Gude, Karen
Sent: Monday, June 05, 2017 6:48 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Thanks, Rose!

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Donna,

Hi. Given that Rose is on travel this week, I am reaching out to you. There is a [National Tribal Caucus](#) call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)

Sorry for the last minute ask.

Thanks,

Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL

Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM

End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly

Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle

Required Attendees: Chang, Elle; EPA HICS; EPA RICS

Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----

From: Chang, Elle

Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS

Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa

Subject: 2017 NTC Monthly Meeting - ALL

When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: OITA Fishbowl - DCRoomRRB 31207

Call-in:

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

From: Christensen, Damaris
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Accepted: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 6/6/2017 1:20:36 PM
Subject: RE: WOTUS Call in Nonresponsive Conference Code/ Ex. 6

Also for June 14th I do not have any rooms available from 11a-12noon.

From: Downing, Donna
Sent: Tuesday, June 6, 2017 9:10 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOTUS Call in Nonresponsive Conference Code/ Ex. 6

Yes, I believe we still plan to have the 10am with Mike and the interagency WOTUS leadership, and to follow that up with a staff-level meeting at 11am in the same room if possible.

I'll check with Mindy and let you know if she's heard of any plans to change.

Thanks for asking!

Donna

From: Penman, Crystal
Sent: Tuesday, June 06, 2017 7:32 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS Call in Nonresponsive Conference Code/ Ex. 6

Do you still need 3233 from 10:45-11:45am. Last week was the last entry on Mike's calendar. (this is the get together meeting you have after the WOTUS meeting). Please advise.

Subject:	WOTUS Call in Nonresponsive Conference Code/ Ex. 6
Location:	3233 WJCE
Start:	Wed 6/7/2017 10:00 AM
End:	Wed 6/7/2017 10:45 AM
Recurrence:	Weekly
Recurrence Pattern:	every Wednesday from 10:00 AM to 10:45 AM
Meeting Status:	Meeting organizer
Organizer:	Shapiro, Mike
Required Attendees:	Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-

Optional Attendees:

Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Cheatham, Reggie; Donald.e.jackson@usace.army.mil; Hewitt, Julie; Brown, Byron; Bowman, Liz; Peterson, Carol; Dennis, Allison
FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Connors, Sandra; Jennings, Kim; Cook-Shyovitz, Becky; Cope, Clayton; Goodwin, Kara

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 6/6/2017 1:18:11 PM
Subject: RE: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]

3233 will not be available tomorrow. I can offer 2369b from 10:45am-11:30am only.

From: Downing, Donna
Sent: Tuesday, June 6, 2017 9:10 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOTUS Call in 1 [Nonresponsive Conference Code/ Ex. 6]

Yes, I believe we still plan to have the 10am with Mike and the interagency WOTUS leadership, and to follow that up with a staff-level meeting at 11am in the same room if possible.

I'll check with Mindy and let you know if she's heard of any plans to change.

Thanks for asking!

Donna

From: Penman, Crystal
Sent: Tuesday, June 06, 2017 7:32 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]

Do you still need 3233 from 10:45-11:45am. Last week was the last entry on Mike's calendar. (this is the get together meeting you have after the WOTUS meeting). Please advise.

Subject: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]
Location: 3233 WJCE

Start: Wed 6/7/2017 10:00 AM
End: Wed 6/7/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter,

Optional Attendees:

Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Cheatham, Reggie; Donald.e.jackson@usace.army.mil; Hewitt, Julie; Brown, Byron; Bowman, Liz; Peterson, Carol; Dennis, Allison
FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Connors, Sandra; Jennings, Kim; Cook-Shyovitz, Becky; Cope, Clayton; Goodwin, Kara

To: Downing, Donna[Downing.Donna@epa.gov]

From: Penman, Crystal

Sent: Tue 6/6/2017 11:22:21 AM

Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

Do you still need 3233 from 10:45-11:45am. Last week was the last entry on Mike's calendar. (this is the get together meeting you have after the WOTUS meeting). Please advise.

Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**
Location: 3233 WJCE

Start: Wed 6/7/2017 10:00 AM

End: Wed 6/7/2017 10:45 AM

Recurrence: Weekly

Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Cheatham, Reggie; Donald.e.jackson@usace.army.mil; Hewitt, Julie; Brown, Byron; Bowman, Liz; Peterson, Carol; Dennis, Allison

Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Connors, Sandra; Jennings, Kim; Cook-Shyovitz, Becky; Cope, Clayton; Goodwin, Kara

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Mon 6/5/2017 11:53:15 PM
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

We have a meeting with the association of state floodplain managers and the national water resources association Wednesday at 2. I'll talk with Donna tomorrow about staffing. However - I wonder if this is something Simma or Carrie could cover?

Damaris

Sent from my iPhone

On Jun 5, 2017, at 6:46 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Weird think I mistyped Damaris's email so trying again

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

On Jun 5, 2017, at 9:18 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Donna,

Hi. Given that Rose is on travel this week, I am reaching out to you. There is a [National Tribal Caucus](#) call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)

Sorry for the last minute ask.

Thanks,

Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----

From: Chang, Elle
Sent: Tuesday, December 13, 2016 3:04 PM
To: Chang, Elle; EPA HICS; EPA RICS
Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa
Subject: 2017 NTC Monthly Meeting - ALL
When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: OITA Fishbowl - DCRoomRRB 31207

Call-in: **Nonresponsive Conference Code/ Ex. 6**

Agendas will be attached to the meeting invitation as it becomes available.

To: Gude, Karen[Gude.Karen@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 6/5/2017 10:46:23 PM
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Weird think I mistyped Damaris's email so trying again

Sent from my iPhone

On Jun 5, 2017, at 6:45 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

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Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly

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Meeting Status: Accepted

Organizer: Chang, Elle

Required Attendees: Chang, Elle; EPA HICS; EPA RICS

Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----

From: Chang, Elle

Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS

Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa

Subject: 2017 NTC Monthly Meeting - ALL

When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: OITA Fishbowl - DCRoomRRB 31207

Call-in: Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

To: Gude, Karen[Gude.Karen@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov];
chistensen.damaris@epa.gov[chistensen.damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 6/5/2017 10:45:20 PM
Subject: Re: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

There's a conflicting federalism meeting at 2 on Wednesday. Copying Damaris to see if anyone can make the NTOC. Sorry that I won't be there

Sent from my iPhone

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(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
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Recurrence: Monthly
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Meeting Status: Accepted

Organizer: Chang, Elle

Required Attendees: Chang, Elle; EPA HICS; EPA RICS

Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----

From: Chang, Elle

Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS

Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa

Subject: 2017 NTC Monthly Meeting - ALL

When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: OITA Fishbowl - DCRoomRRB 31207

Call-in:

Nonresponsive Conference Code/ Ex. 6

Agendas will be attached to the meeting invitation as it becomes available.

To: aduran@pojoaque.org[aduran@pojoaque.org];
aeperson@peoriatribe.com[aeperson@peoriatribe.com]; aheim@omtribe.org[aheim@omtribe.org];
alan.hatch@santaana-nsn.gov[alan.hatch@santaana-nsn.gov];
alankford@miamination.com[alankford@miamination.com];
amuller@potawatomi.org[amuller@potawatomi.org]; amurry@peoriatribe.com[amurry@peoriatribe.com];

Personal Address / Ex. 6

Antonio.garza@kttribe.org[Antonio.garza@kttribe.org]; April-Hathcoat_cherokee.org[April-Hathcoat@cherokee.org]; aringia@lagunapueblo-nsn.gov[aringia@lagunapueblo-nsn.gov];
asylestine@actribe.org[asylestine@actribe.org]; battise.jenna@actribe.org[battise.jenna@actribe.org];
bgarcia@sfpueblo.com[bgarcia@sfpueblo.com];
BLeDoux@CoushattaTribeLA.org[BLeDoux@CoushattaTribeLA.org];
blujan@taospueblo.com[blujan@taospueblo.com]; Boss, Eve[Boss.Eve@epa.gov];
Boyd.Nystedt@enipc.org[Boyd.Nystedt@enipc.org];
brians@comanchenation.com[brians@comanchenation.com];

Personal Address / Ex. 6

CATcity@taospueblo.com[CATcity@taospueblo.com];
ccooper@delawarenation.com[ccooper@delawarenation.com];

Personal Email / Ex. 6

cherylstafford@sbcglobal.net[cherylstafford@sbcglobal.net];
ChrisWilliams@CoushattaTribeLA.org[ChrisWilliams@CoushattaTribeLA.org];
cindy.gammons@chickasaw.net[cindy.gammons@chickasaw.net];
CKreman@quapawtribe.com[CKreman@quapawtribe.com]; clee@wyandotte-nation.org[clee@wyandotte-nation.org];
connie.martinez@ohkay.org[connie.martinez@ohkay.org]; cromero@omtribe.org[cromero@omtribe.org];
cseapachetribes@yahoo.com[cseapachetribes@yahoo.com];
CSloan@quapawtribe.com[CSloan@quapawtribe.com];

Personal Email / Ex. 6

Personal Email / Ex. 6

Dale.Miller@sacandfoxnation-nsn.gov[Dale.Miller@sacandfoxnation-nsn.gov]; damon.dunbar@c-a-tribes.org[damon.dunbar@c-a-tribes.org]; danyaibe@ZiaPueblo.org[danyaibe@ZiaPueblo.org];
dbeecher@lagunapueblo-nsn.gov[dbeecher@lagunapueblo-nsn.gov];
dejene@kawnation.com[dejene@kawnation.com];
dinoc@santaclarapueblo.org[dinoc@santaclarapueblo.org];
dmartinez@puebloofacoma.org[dmartinez@puebloofacoma.org]; douglas.m@sno-nsn.gov[douglas.m@sno-nsn.gov]; dpaymond@chitimacha.gov[dpaymond@chitimacha.gov];
dshields@kickapootribeofoklahoma.com[dshields@kickapootribeofoklahoma.com];
earlii@tunica.org[earlii@tunica.org]; earnall_peoriatribe.com[earnall@peoriatribe.com]; eacruz@ydsp-nsn.gov[eacruz@ydsp-nsn.gov]; environment_picurispueblo.org[environment@picurispueblo.org];
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From: Gee, Randy

Sent: Mon 6/5/2017 9:38:30 PM

Subject: June RTOC Conference Call

WOTUS2 tribal info and consultation - 6-6-2017.pdf

Good afternoon,

The next Regional Tribal Operations Committee (RTOC) conference call is Tuesday, June 6, at 10:30 AM CDT (9:30 AM MDT). Please see the call agenda and call information. Thank you in advance to the call presenters.

Agenda

Oil and Gas NSPS 90-day Stay
Cozzie and Amy Hambrick, EPA OAQPS

David

- **Oil and Gas NSPS 90-day Stay:** Using its Clean Air Act authority, EPA is issuing a 90-day stay of the fugitive emissions, pneumatic pumps, and professional engineer certification requirements from the 2016 New Source Performance Standards for the oil and natural gas industry. Sources do not need to comply with these requirements while the 90-day stay is in effect. As part of a reconsideration process, we expect to prepare a proposed rule, which will allow for public comment. Additional information on the stay and reconsideration available at <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry>

Waters of the United States update (see attached presentation)
Downing, EPA Office of Water

Karen Gude and Donna

July Tribal Caucus and RTOC Meetings
Co-Chair

ITEC and RTOC

Tribal Science Council Update
Kreman, Quapaw Tribe

Craig

Tribal Lands and Environment Forum Update
TWRAP Members

Region 6

NTOC Update
NTC Representatives

Region 6

SO2 Designation Update
EPA Region 6

Dayana Medina,

EPA Healthy Homes Update
EPA Region 6

Mark Berry,

OEJTIA Update

OEJTIA

Announcements

All

Call Info:

Date: Tuesday, June 6, 2017

Time: 10:30am CDT (9:30 MDT)

Conference Call Number:

Code:

Also, the EPA Office of Water requested a list of call attendees and their Pueblo/Tribal Nation Environment Department for their outreach documentation on this issue. If you are planning to join the call tomorrow and have not sent this information yet please send Mark and I this information. Thank you for your assistance.

Thank you,

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Stacey.M.Jensen@usace.army.mil[Stacey.M.Jensen@usace.army.mil]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Cook-Shyovitz, Becky[Cook-Shyovitz.Becky@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Hurl, Kathy
Sent: Mon 6/5/2017 6:39:29 PM
Subject: No the pre registration reminder was/is only for the all on 6/6.

From: Hanson, Andrew on behalf of Goodin, John
Sent: Thursday, June 1, 2017 11:17 AM
To: Christensen, Damaris; Hurl, Kathy
Cc: Cook-Shyovitz, Becky
Subject: Fwd: WOTUS briefings
When: Tuesday, June 6, 2017 2:00 PM-3:00 PM.
Where: DCRoomWest6300D/DC-CCW-OW-WEST

This reminder (below) should be included with all invitations/briefing packages for state/local WOTUS meetings, correct?

Begin forwarded message:

From: "Goodin, John" <Goodin.John@epa.gov<mailto:Goodin.John@epa.gov>>
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov<mailto:Eisenberg.Mindy@epa.gov>>, "Bennett, Tate" <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>, "Hurl, Kathy" <Hurl.Kathy@epa.gov<mailto:Hurl.Kathy@epa.gov>>, "Christensen, Damaris" <Christensen.Damaris@epa.gov<mailto:Christensen.Damaris@epa.gov>>, "Cindy Barger" <cindy.s.barger.civ@mail.mil<mailto:cindy.s.barger.civ@mail.mil>>, "Stacey.M.Jensen@usace.army.mil<mailto:Stacey.M.Jensen@usace.army.mil>>, "Downing, Donna" <Downing.Donna@epa.gov<mailto:Downing.Donna@epa.gov>>, "McDavit, Michael W." <Mcdavit.Michael@epa.gov<mailto:Mcdavit.Michael@epa.gov>>
Cc: "Bowles, Jack" <Bowles.Jack@epa.gov<mailto:Bowles.Jack@epa.gov>>, "Hanson, Andrew" <Hanson.Andrew@epa.gov<mailto:Hanson.Andrew@epa.gov>>, "Wesson, Dolores" <Wesson.Dolores@epa.gov<mailto:Wesson.Dolores@epa.gov>>, "David.F.Dale@usace.army.mil<mailto:David.F.Dale@usace.army.mil>>" <David.F.Dale@usace.army.mil<mailto:David.F.Dale@usace.army.mil>>
Subject: WOTUS2: Federalism webinar with ASWM

Be sure to register a day or two prior to the webinar to get a unique call in number.

Here is the link to register:

Nonresponsive Internal URL/ Ex. 6

Agenda

Introductions

Welcome – Association chair

- * EPA Political(s) – Tate Bennett, others
- * Army rep

* USACE rep

Presentation – Mindy Eisenberg or John Goodin

Q&A

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From: Gee, Randy

Sent: Mon 6/5/2017 4:10:34 PM
Subject: Presentation on WOUS Issue and Attendance Request
[WOTUS2 tribal info and consultation - 6-6-2017.pdf](#)

Good morning/afternoon,

Please see the attached PDF of the presentation on “waters of the United States” for Tuesday’s RTOC conference call.

Also, the EPA Office of Water requested a list of call attendees and their Pueblo/Tribal Nation Environment Department for their outreach documentation on this issue. If you are planning to join the call tomorrow please send Mark and I this information.

Thank you for assistance and we will send the final call agenda later today.

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

To: Berrios, Lisa[Berrios.Lisa@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 6/5/2017 3:04:45 PM
Subject: Re: WOUS Tribal Update - Region 4 RTOC

Of course, please do share the PDF. Thanks, Lisa!!

Sent from my iPhone

On Jun 5, 2017, at 8:24 AM, Berrios, Lisa <Berrios.Lisa@epa.gov> wrote:

Are you ok with my sharing prior to the call? It is often helpful for the tribes to review in advance and also will be available to those who have troubleshooting problems with the webinar.

Lisa Berrios

Tribal Relations Coordinator

404-562-8318

Personal Phone / Ex. 6

From: Kwok, Rose
Sent: Saturday, June 03, 2017 10:48 AM
To: Berrios, Lisa <Berrios.Lisa@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: jerry.cain@choctaw.org; Darin Steen <darin.steen@catawbaindian.net>
Subject: RE: WOUS Tribal Update - Region 4 RTOC

Hi Lisa,

Here is a copy of Wednesday's presentation. We will still be presenting via webinar, but this is for distribution after the call (or if someone won't be able to join the webinar). I will be on work travel, so my colleague Donna Downing will be presenting for me. I've copied Donna here. I will be checking email if you have any questions.

Thanks for all of your help!

Rose

From: Berrios, Lisa
Sent: Friday, May 26, 2017 2:47 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Cc: jerry.cain@choctaw.org; Darin Steen <darin.steen@catawbaindian.net>
Subject: RE: WOUS Tribal Update - Region 4 RTOC

I will send the information on participants after the call.

Also, the call in number should be Nonresponsive Conference Code/ Ex. 6 It should be in the Location component of the invite.

Thanks

Lisa

Lisa Berrios

Tribal Relations Coordinator

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Also, I didn't see the conference line. Can you send it along when you get the chance?
Thanks!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose
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To: Berrios, Lisa; Gude, Karen
Cc: jerry.cain@choctaw.org; Darin Steen
Subject: Re: WOUS Tribal Update - Region 4 RTOC

Thanks, Lisa! Here is the webinar link: Webinar:

Nonresponsive Internal URL/ Ex. 6

Would you be able to send the list of the participants (with their tribal affiliations) after the call? We are tracking this information. Thanks!

Rose Kwok

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To: Kwok, Rose; Gude, Karen
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From: Kwok, Rose
Sent: Tuesday, May 09, 2017 6:15 PM
To: Gude, Karen <Gude.Karen@epa.gov>; Berrios, Lisa <Berrios.Lisa@epa.gov>
Subject: RE: WOUS Tribal Update - Region 4 RTOC

Hi Lisa,

I believe that you've been coordinating with Karen Gude about the possibility of presenting

at the next Region 10 RTOC call next Thursday, May 18. I have spoken to my management, and we think that this is a good opportunity for us to provide outreach on the “waters of the United States” rulemaking efforts to tribes in your region. I assume that this is a conference call and not an in-person meeting? We would definitely be interested in presenting via webinar. Let us know if that’s something that we should set up on our end – we can easily set that up and send you the webinar registration link (we typically set it up with registration so that we can track which tribes participate). Let us know if we’re confirmed for the 7th – I believe that we are only tentatively on the agenda. I believe that some of our regional program staff from Region 4 will also join us on the line.

Thanks!

Rose

Regional Tribal Outreach Opportunities:

- **Region 4:** Tentatively on schedule for 6/7 R4 monthly RTOC call from 11-12 PM ET. POC: Lisa Berrios, R4 RIC. Webinar capable; can likely have majority of an hour, if need be.

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Gude, Karen
Sent: Mon 6/5/2017 1:18:55 PM
Subject: Request to Speak on WOTUS/SCOTUS Dec at 6/6 NTC Monthly Meeting

Donna,

Hi. Given that Rose is on travel this week, I am reaching out to you. There is a [National Tribal Caucus](#) call being held this Wednesday from 2-3 PM (see calendar listing below). I just learned that the NTC is interested in hearing more about WOTUS. Specifically, they have asked to hear about how the Clean Water Rule changes will affect tribes, with an explanation of the two SCOTUS decisions. I realize that a comparison of the two SCOTUS decisions isn't really possible here, but wanted to see if you or someone else from OWOW might be able to accommodate this request to hear more about the rulemaking. (Looking at your calendar, unfortunately, it looks like you are unavailable at this.)

Sorry for the last minute ask.

Thanks,
Karen
(202) 564-0831

Subject: FW: 2017 NTC Monthly Meeting - ALL
Location: OITA Fishbowl - DCRoomRRB 31207

Start: Wed 6/7/2017 2:00 PM
End: Wed 6/7/2017 3:00 PM

Recurrence: Monthly
Recurrence Pattern: Occurs every month on the first Wednesday of the month from 2:00 PM to 3:00 PM effective 2/1/2017 until 12/6/2017.

Meeting Status: Accepted

Organizer: Chang, Elle
Required Attendees: Chang, Elle; EPA HICS; EPA RICS
Optional Attendees: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa; Gude, Karen

-----Original Appointment-----

From: Chang, Elle

Sent: Tuesday, December 13, 2016 3:04 PM

To: Chang, Elle; EPA HICS; EPA RICS

Cc: Baca, Andrew; Bustos, Patrick; Childers, Pat; Jackson, Elizabeth; Ebbert, Laura; saxe, jennie; Herbst, John; Heller, Emily; Rodia, Monica; Harmon, Darrel; Jonathan, Grant; Binder, Jonathan; Rogers, Patrick; Conbere, Susan; Greenwater, Anthony; Snyder, Jessica; Overman, Pamela; Hauff, Amanda; Vuong, Stephanie; Murphy, Stacy; Videtich, Callie; Berrios, Lisa

Subject: 2017 NTC Monthly Meeting - ALL

When: Occurs the first Wednesday of every 1 month(s) effective 2/1/2017 until 12/6/2017 from 2:00 PM to 3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: OITA Fishbowl - DCRoomRRB 31207

Call-in: **Nonresponsive Conference Code/ Ex. 6**

Agendas will be attached to the meeting invitation as it becomes available.

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Berrios, Lisa
Sent: Mon 6/5/2017 12:24:22 PM
Subject: RE: WOUS Tribal Update - Region 4 RTOC

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Tribal Relations Coordinator

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Wetlands Division

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To: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Donna Downing
Sent: Mon 6/5/2017 2:02:00 AM
Subject: Pittsburgh powerpoint -- made a couple of tweaks
NRT-RRT Co-Chairs Mtg June 2017 WOTUS Session --DMD.pptx

Hi Troy –

(I'm emailing this from my home account with a cc to my work email, since the new Windows 10 software apparently is lacking something necessary for remote access).

Deliberative Process / Ex. 5

I'll talk to you on Tuesday. Thanks again!

Donna

To: McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 7:23:28 PM
Subject: RE: Kwok_SFS2017v3.ppt.pptx
[Kwok_SFS2017v3.ppt.pptx](#)

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Saturday, June 03, 2017 12:16 PM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Kwok_SFS2017v3.ppt.pptx

Deliberative Process / Ex. 5

To: McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 4:17:45 PM
Subject: Kwok_SFS2017v3.ppt.pptx
Kwok_SFS2017v3.ppt.pptx

Deliberative Process / Ex. 5

To: Gee, Randy[Gee.Randy@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Allen, Mark[Allen.Mark@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 4:11:37 PM
Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Wonderful, thanks so much!

From: Gee, Randy
Sent: Saturday, June 03, 2017 12:07 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Allen, Mark <Allen.Mark@epa.gov>
Subject: Re: Seeking Opportunities for Regional Outreach on WOUS

Thanks Rose! We will work with our tribal partners to get you the list.

Randy

On Jun 3, 2017, at 9:45 AM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Hi Randy,

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After the meeting can we get a list of all of the RTOC participants on the call and their tribal affiliation? We are documenting this all as part of our tribal consultation.

Thanks again!

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To: Gude, Karen <Gude.Karen@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Allen, Mark <Allen.Mark@epa.gov>
Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Hello Karen-sorry for the delay in response. Your topic is set for the June 6 call, which will lead off the call and go for 20 minutes. I will send Rose and you a calendar invite but here is the call info:

Date: Tuesday, June 6

Time: 11:30am EDT (10:30am Dallas)

Conference Number: Nonresponsive Conference Code/ Ex. 6

Code: Nonresponsive Conference Code/ Ex. 6

Thanks and have a great holiday.

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

From: Gude, Karen
Sent: Tuesday, May 23, 2017 2:58 PM
To: Gee, Randy <Gee.Randy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: Seeking Opportunities for Regional Outreach on WOUS

Randy,

Hi. When you get a chance, I just wanted to touch base on the 6/6 RTOC meeting to see if we are confirmed for a 20-minute slot on the agenda, beginning at 11:30 AM EDT. We can provide a PPT for participants and will confirm attendees in advance of the meeting; we'll just need a call-in number to share with those calling in. Thanks again for your assistance with this effort.

Karen

(202) 564-0831

From: Gude, Karen
Sent: Wednesday, May 17, 2017 3:32 PM
To: Gee, Randy <Gee.Randy@epa.gov>
Cc: Evans, Diane <evans.diane@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Thanks again for your help.

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

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<WOTUS2 tribal info and consultation - 6-6-2017.pdf>

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Sent: Friday, May 26, 2017 2:47 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Cc: jerry.cain@choctaw.org; Darin Steen < darin.steen@catawbaindian.net>
Subject: RE: WOUS Tribal Update - Region 4 RTOC

I will send the information on participants after the call.

Also, the call in number should be

Nonresponsive Conference Code/ Ex. 6

It should be in the Location

component of the invite.

Thanks

Lisa

Lisa Berrios

Tribal Relations Coordinator

404-562-8318

Personal Phone / Ex. 6

From: Kwok, Rose

Sent: Friday, May 26, 2017 11:21 AM

To: Berrios, Lisa <Berrios.Lisa@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>

Cc: jerry.cain@choctaw.org; Darin Steen <darin.steen@catawbaindian.net>

Subject: Re: WOUS Tribal Update - Region 4 RTOC

Also, I didn't see the conference line. Can you send it along when you get the chance? Thanks!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose

Sent: Friday, May 26, 2017 11:18:58 AM

To: Berrios, Lisa; Gude, Karen

Cc: jerry.cain@choctaw.org; Darin Steen

Subject: Re: WOUS Tribal Update - Region 4 RTOC

Thanks, Lisa! Here is the webinar link: Webinar:

Nonresponsive Internal URL/ Ex. 6

Would you be able to send the list of the participants (with their tribal affiliations) after the call?
We are tracking this information. Thanks!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Berrios, Lisa
Sent: Thursday, May 25, 2017 3:25:24 PM
To: Kwok, Rose; Gude, Karen
Cc: jerry.cain@choctaw.org; Darin Steen
Subject: RE: WOUS Tribal Update - Region 4 RTOC

Hi Rose and Karen,

I want to confirm that we are all set for June 7 at 11 am. We have reserved the majority of meeting time for this discussion and will start immediately after roll call/welcome by the RTOC Chair. Please send the webinar link and any additional material to me and I will add to the meeting invite.

Thanks

Lisa

Lisa Berrios

Tribal Relations Coordinator

404-562-8318

Personal Phone / Ex. 6

From: Kwok, Rose

Sent: Tuesday, May 09, 2017 6:15 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Berrios, Lisa <Berrios.Lisa@epa.gov>

Subject: RE: WOUS Tribal Update - Region 4 RTOC

Hi Lisa,

I believe that you've been coordinating with Karen Gude about the possibility of presenting at the next Region 10 RTOC call next Thursday, May 18. I have spoken to my management, and we think that this is a good opportunity for us to provide outreach on the "waters of the United States" rulemaking efforts to tribes in your region. I assume that this is a conference call and not an in-person meeting? We would definitely be interested in presenting via webinar. Let us know if that's something that we should set up on our end – we can easily set that up and send you the webinar registration link (we typically set it up with registration so that we can track which tribes participate). Let us know if we're confirmed for the 7th – I believe that we are only tentatively on the agenda. I believe that some of our regional program staff from Region 4 will also join us on the line.

Thanks!

Rose

Regional Tribal Outreach Opportunities:

- **Region 4:** Tentatively on schedule for 6/7 R4 monthly RTOC call from 11-12 PM ET. POC: Lisa Berrios, R4 RIC. Webinar capable; can likely have majority of an hour, if need be.

To: Gee, Randy[Gee.Randy@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Allen, Mark[Allen.Mark@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 2:45:16 PM
Subject: RE: Seeking Opportunities for Regional Outreach on WOUS
WOTUS2 tribal info and consultation - 6-6-2017.pdf

Hi Randy,

I've attached the PDF of the presentation on "waters of the United States" for Tuesday's RTOC call. I believe you said that you'd like to distribute it to the RTOC in advance of the call. I will be on work travel, so my colleague Donna Downing will be presenting for me. I've copied her here. I will be checking email if you have any questions.

After the meeting can we get a list of all of the RTOC participants on the call and their tribal affiliation? We are documenting this all as part of our tribal consultation.

Thanks again!

Rose

From: Gee, Randy
Sent: Thursday, May 25, 2017 1:07 PM
To: Gude, Karen <Gude.Karen@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Allen, Mark <Allen.Mark@epa.gov>
Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Hello Karen-sorry for the delay in response. Your topic is set for the June 6 call, which will lead off the call and go for 20 minutes. I will send Rose and you a calendar invite but here is the call info:

Date: Tuesday, June 6

Time: 11:30am EDT (10:30am Dallas)

Conference Number:

Code:

Thanks and have a great holiday.

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

From: Gude, Karen
Sent: Tuesday, May 23, 2017 2:58 PM
To: Gee, Randy <Gee.Randy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: Seeking Opportunities for Regional Outreach on WOUS

Randy,

Hi. When you get a chance, I just wanted to touch base on the 6/6 RTOC meeting to see if we are confirmed for a 20-minute slot on the agenda, beginning at 11:30 AM EDT. We can provide a PPT for participants and will confirm attendees in advance of the meeting; we'll just need a call-in number to share with those calling in. Thanks again for your assistance with this effort.

Karen

(202) 564-0831

From: Gude, Karen
Sent: Wednesday, May 17, 2017 3:32 PM
To: Gee, Randy <Gee.Randy@epa.gov>
Cc: Evans, Diane <evans.diane@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Randy,

Thank you. This should work well for us; we will plan for a 20 minute presentation/chance for questions at the start of your call. Thank you. Is there a call-in number for the meeting? If so, could you please send it to me when you get a chance, so that I can be sure to provide it for those participating here?

As we get a little closer, we will confirm for you who from Headquarters will be calling in, and provide the PowerPoint presentation.

I've looped Rose Kwok in on this email for awareness, as she is the program lead working on WOUS tribal consultation efforts. Rose will be unable to attend on 6/6 due to a prior engagement, but we will be identifying additional staff to participate.

Thanks again for your help.

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Gee, Randy

Sent: Wednesday, May 17, 2017 12:12 PM

To: Gude, Karen <Gude.Karen@epa.gov>

Cc: Evans, Diane <evans.diane@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>

Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Hello Karen,

Our next RTOC call is scheduled for Tuesday, June 6 beginning at 11:30 EDT. We can provide 20 minutes to discuss the issue, and if you have a PowerPoint we can send it to everyone. That would be the best way to provide the information. We could have you lead off the call. Thanks for reaching out to the Region to discuss this issue. Our Oklahoma tribal partners expressed an interest at their meeting yesterday.

Randy Gee

EPA Region 6 Office of Environmental Justice, Tribal and International Affairs

Office Phone: 214-665-8355

From: Gude, Karen

Sent: Wednesday, May 17, 2017 10:37 AM

To: Gee, Randy <Gee.Randy@epa.gov>

Subject: RE: Seeking Opportunities for Regional Outreach on WOUS

Hi Randy,

Following up to your email last week about potentially including a WOUS information/listening session on the 6/6 Region 6 RTOC call agenda --- If possible, we would like to be able to participate in the 6/6 call. The date should work for us. Has the timing for the call been scheduled? If so, could please let me know, so that I can ensure that we have someone available to participate at that time. Is a webinar an appropriate way to share information with your RTOC members? Finally, do you have a sense of how much time we might be able to present/listen? We've done a number of 45-60 minute sessions, understanding this likely might be more time than would be available to us. We can also do a truncated presentation, if need be; especially if your RTOC members are familiar with this issues and/or have participated in any of the previous national webinars on the subject (the information that we'd be sharing would be largely the same as that presented in those venues.) Please just let me know what might work best for your group.

Thanks again for your assistance on this. If you should have any questions/concerns, please do

not hesitate to let me know.

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Kwok, Rose

Location: [Nonresponsive Conference Code/ Ex. 6] and webinar link; Pacific Conference Room

Importance: Normal

Subject: Confirmed: Region 4 RTOC on WOTUS

Start Date/Time: Wed 6/7/2017 3:00:00 PM

End Date/Time: Wed 6/7/2017 4:00:00 PM

WOTUS2 tribal info and consultation - 6-7-2017.pptx

06-07-17 TribalRunofShow.docx

WOTUS2 tribal info and consultation - 6-7-2017.pdf

Call-in: [Nonresponsive Conference Code/ Ex. 6]

Link to webinar with OW - [Nonresponsive Internal URL/ Ex. 6]

Room in DC: I've reserved the Pacific Conference Room, 7114-M WJC West

Region 4 has confirmed that we will have an opportunity to present on WOTUS at their next RTOC call. I will still be on travel Donna will be giving the presentation. Region 4 has given us most of the hour to present. Attached are the materials for the call. I'll send the PDF version to the Region 4 tribal contact in case she wants to distribute the presentation after the call.

Thanks, all.

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Charles Smith[charles.r.smith567.civ@mail.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 2:27:47 PM
Subject: RE: Coverage for 6/6 and 6/7 RTOCs

Hi Folks,

Since I'll be out of the office next week, here's the plan and the location of the materials for the two RTOCs on June 6 and June 7. The plan is that Donna will give the main presentation at the Region 6 and Region 4 RTOCs. At the Region 4 RTOC, we have more time (close to an hour), so Army/Corps folks let me know if you'd be interested in saying a few brief words similar to the consultation call we had on Wednesday. Brittany will help set up the webinar for the Region 4 one. Damaris will help take notes (also, sign into the webinar – you are a host).

I've put all of the materials on Sharepoint in the following folders. This includes a Draft Run of Show for each RTOC and the presentation. I'll also attach the latest copies to the meeting invitations.

Region 6 RTOC (6/6/17):

Nonresponsive Internal URL/ Ex. 6

Region 4 RTOC (6/7/17):

Nonresponsive Internal URL/ Ex. 6

And a summary below of each:

Region 6 RTOC: Tuesday, June 6 @ 11:30

• [REDACTED] 1 **Nonresponsive Conference Code/ Ex. 6**

• [REDACTED] Potomac Conference Room (7301) OR if new phone hasn't arrived, I've also reserved Everglades (7343) as a back-up

- [REDACTED] R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS.

- [REDACTED] They prefer that we send them the slides in advance and to not do a webinar. I will send out the slides momentarily

- [REDACTED] Donna will give presentation

- [REDACTED] Damaris will take notes

- [REDACTED] This is the same time as the session that I organized, so I can't call in

- [REDACTED] I've invited the region, Army, and Corps to join

Region 4 RTOC: Wednesday, June 7 @ 11

- [REDACTED] Nonresponsive Conference Code/ Ex. 6

- [REDACTED] We'll be doing a webinar: Nonresponsive Internal URL/ Ex. 6

- [REDACTED] Pacific Conference Room (7114-M)

- [REDACTED] We can have most of the hour.

- [REDACTED] Brittany will be the host of the webinar (thank you) and will set up the presentation in the room

- [REDACTED] Donna will give the presentation

- [REDACTED] Mindy has the option to give opening remarks if she wants to (or Donna can); Army/Corps also has the option to given opening remarks if they want to.

- [REDACTED] Damaris will take notes

- [REDACTED] This is the same time that Nancy Stoner is giving her keynote speech, so I can't call in

- [REDACTED] I've invited the region (Mike Wylie will call in since Eric will be at the same conference), Army, and Corps to join

A HUGE thanks to all!!

Rose

To: Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Kwok, Rose
Sent: Sat 6/3/2017 12:31:37 AM
Subject: RE: Heads Up: WOTUS

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 • Donna will be able to confirm though. Thanks!

From: Fonseca, Silvina
Sent: Friday, June 02, 2017 12:05 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Heads Up: WOTUS

Thank you!

Silvina Fonseca

Special Assistant (OLEM, OARM, OHS, OSBP and OCR)

Office of the Administrator

U.S. Environmental Protection Agency

Desk: 202.564.1955

Cell: 202.306.6844

From: Kwok, Rose
Sent: Friday, June 02, 2017 11:15 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Heads Up: WOTUS

Deliberative Process / Ex. 5

Thanks, all! I've copied Donna since I'll be on travel next week.

From: Evalenko, Sandy
Sent: Friday, June 02, 2017 6:58 AM
To: Threet, Derek <Threet.Derek@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: Heads Up: WOTUS

Deliberative Process / Ex. 5

Sandy
Sent from my iPhone

On Jun 1, 2017, at 11:26 AM, Threet, Derek <Threet.Derek@epa.gov> wrote:

Hi All –

I am out of the office tomorrow. Silvina Fonseca will be covering for me. I will be checking my email and phone throughout the day.

If you need anything from me before 3pm today, please let me know.

Thanks.

Derek

From: Evalenko, Sandy
Sent: Thursday, June 01, 2017 7:36 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: RE: Heads Up: WIFIA Fees Final Rule

Ann: Thanks!

Deliberative Process / Ex. 5

Sandy

From: Campbell, Ann
Sent: Wednesday, May 31, 2017 6:42 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: Re: Heads Up: WIFIA Fees Final Rule

Deliberative Process / Ex. 5

On May 31, 2017, at 4:41 PM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sandy

<Action Memo_OW to Administrator_WIFIA Fee rule_5-30-17 clean.docx>

<WIFIA_User_Fee Rule_final 5-30-17 clean.docx>

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Fri 6/2/2017 8:36:15 PM
Subject: Re: WOTUS2 EROM analysis
[wotus2erom.html](#)

Deliberative Process / Ex. 5

I'll get the final report out end of next week.

safe travels again!

From: Kwok, Rose
Sent: Wednesday, May 17, 2017 4:01:22 PM
To: Auerbach, Daniel
Cc: Downing, Donna
Subject: RE: WOTUS2 EROM analysis

Deliberative Process / Ex. 5

From: Auerbach, Daniel
Sent: Wednesday, May 17, 2017 3:39 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS2 EROM analysis

Deliberative Process / Ex. 5

A few questions before I call it "final". Would you like to see...

Deliberative Process / Ex. 5

To: Michael Lengle[michael.lengle@csra.com]; Downing, Donna[Downing.Donna@epa.gov]
From: Swackhammer, J-Troy
Sent: Fri 6/2/2017 7:20:29 PM
Subject: RE: Registration for the Pittsburgh meeting

OK, thx Michael.

From: Lengle, Michael [mailto:Michael.Lengle@csra.com]
Sent: Friday, June 02, 2017 7:01 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>
Subject: RE: Registration for the Pittsburgh meeting

Donna,

No further action is necessary. Your registration was completed based on the agenda and information provided by Troy.

Mike

EPA EMPLOYEES: When composing a new message, please verify that the message is addressed to CSRA.com and not EPA.gov. I cannot access the EPA email address listed in the EPA global directory.

Michael Lengle

Project Manager

CSRA Inc.

Science, Policy and Mission Programs

3434 Washington Boulevard, 2020D, Arlington, VA 22201

o: +1-571-290-4390 | michael.lengle@csra.com | www.csra.com
CSRA

Think Next. Now.

 Please consider the environment before printing this e-mail

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From: Downing, Donna [<mailto:Downing.Donna@epa.gov>]
Sent: Thursday, June 01, 2017 6:36 PM
To: Lengle, Michael
Cc: Swackhammer, J-Troy
Subject: Registration for the Pittsburgh meeting

Hi Michael –

I have been asked to speak at the “waters of the US” session at the Pittsburgh conference, presenting on the morning of Wednesday June 14th. I was told to go to the surveymonkey website and register, in addition to the usual travel logistics and hotel arrangements. The travel arrangements are all set, but unfortunately I couldn’t register for the conference because the surveymonkey website was closed. Could you help me out?

Troy Shwackhammer is my OLEM contact here at EPA for the session, and is the session moderator. I’ll cc Troy as an FYI.

Thanks for any help you can offer!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Klos, Caroline[Klos.caroline@epa.gov]
From: Thomas, Latosha
Sent: Fri 6/2/2017 5:15:41 PM
Subject: Re: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)

Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
(**Personal Phone / Ex. 6**)
thomas.latosha@epa.gov

On Jun 2, 2017, at 1:06 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Latosha,

Here are the latest talking points on waters rule.

thanks

Mindy Eisenberg

Acting Director, Oceans, Wetlands and Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Thomas, Latosha
Sent: Tuesday, May 30, 2017 10:25 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>
Subject: FW: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)

FYI!

From: Thomas, Latosha
Sent: Tuesday, May 30, 2017 9:59 AM
To: Klos, Caroline <Klos.caroline@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Fontaine, Tim <Fontaine.Tim@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Subject: Request for Talking Points: Enviro Stakeholders Meeting (6.7.17 @12PM)

Hi All,

Our enviros stakeholder meeting is scheduled for **Wednesday, June 7 from 12-1PM**. The requested topics for the agenda are below. If you all have anything to add, please let me know. Please submit your talking points to me by **COB Monday, June 5**. Thanks!

- Budget
- Update on implementation of the Stoner Nutrient Framework letter that was endorsed by Administrator Pruitt
- Information on how the conductivity guidance will be handled
- Clean Water Rule

Latosha Thomas

U.S. Environmental Protection Agency

Office of Water (On Detail)

(202) 564-0211 (desk)

Personal Phone / Ex. 6

thomas.latosha@epa.gov

<WOTUS TPs.docx>

To: Kwok, Rose[Kwok.Rose@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Evalenko, Sandy
Sent: Fri 6/2/2017 4:18:07 PM
Subject: RE: Heads Up: WOTUS

Thanks for the update!

From: Kwok, Rose
Sent: Friday, June 02, 2017 11:15 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Heads Up: WOTUS

Deliberative Process / Ex. 5

Thanks, all! I've copied Donna since I'll be on travel next week.

From: Evalenko, Sandy
Sent: Friday, June 02, 2017 6:58 AM
To: Threet, Derek <Threet.Derek@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: Heads Up: WOTUS

Deliberative Process / Ex. 5

Sandy
Sent from my iPhone

On Jun 1, 2017, at 11:26 AM, Threet, Derek <Threet.Derek@epa.gov> wrote:

Hi All –

I am out of the office tomorrow. Silvina Fonseca will be covering for me. I will be checking my email and phone throughout the day.

If you need anything from me before 3pm today, please let me know.

Thanks.

Derek

From: Evalenko, Sandy
Sent: Thursday, June 01, 2017 7:36 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: RE: Heads Up: WIFIA Fees Final Rule

Ann: Thanks!

Deliberative Process / Ex. 5

Sandy

From: Campbell, Ann
Sent: Wednesday, May 31, 2017 6:42 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek
<Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: Re: Heads Up: WIFIA Fees Final Rule

Deliberative Process / Ex. 5

On May 31, 2017, at 4:41 PM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sandy

<Action Memo_OW to Administrator_WIFIA Fee rule_5-30-17 clean.docx>

<WIFIA_User_Fee Rule_final 5-30-17 clean.docx>

To: Kwok, Rose[Kwok.Rose@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]
From: Fonseca, Silvina
Sent: Fri 6/2/2017 4:04:57 PM
Subject: RE: Heads Up: WOTUS

Thank you!

Silvina Fonseca

Special Assistant (OLEM, OARM, OHS, OSBP and OCR)

Office of the Administrator

U.S. Environmental Protection Agency

Desk: 202.564.1955

Cell: 202.306.6844

From: Kwok, Rose
Sent: Friday, June 02, 2017 11:15 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: RE: Heads Up: WOTUS

Deliberative Process / Ex. 5

Thanks, all! I've copied Donna since I'll be on travel next week.

From: Evalenko, Sandy

Sent: Friday, June 02, 2017 6:58 AM

To: Threet, Derek <Threet.Derek@epa.gov>

Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>

Subject: Heads Up: WOTUS

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Jun 1, 2017, at 11:26 AM, Threet, Derek <Threet.Derek@epa.gov> wrote:

Hi All –

I am out of the office tomorrow. Silvina Fonseca will be covering for me. I will be checking my email and phone throughout the day.

If you need anything from me before 3pm today, please let me know.

Thanks.

Derek

From: Evalenko, Sandy

Sent: Thursday, June 01, 2017 7:36 AM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: RE: Heads Up: WIFIA Fees Final Rule

Ann: Thanks!

Deliberative Process / Ex. 5

Sandy

From: Campbell, Ann

Sent: Wednesday, May 31, 2017 6:42 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: Re: Heads Up: WIFIA Fees Final Rule

Deliberative Process / Ex. 5

On May 31, 2017, at 4:41 PM, Evalenko, Sandy <Evalenko.Sandy@epa.gov> wrote:

Deliberative Process / Ex. 5

Sandy

<Action Memo_OW to Administrator_WIFIA Fee rule_5-30-17 clean.docx>

<WIFIA_User_Fee Rule_final 5-30-17 clean.docx>

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]
From: Lengle, Michael
Sent: Fri 6/2/2017 11:01:02 AM
Subject: RE: Registration for the Pittsburgh meeting

Donna,

No further action is necessary. Your registration was completed based on the agenda and information provided by Troy.

Mike

EPA EMPLOYEES: When composing a new message, please verify that the message is addressed to CSRA.com and not EPA.gov. I cannot access the EPA email address listed in the EPA global directory.

Michael Lengle

Project Manager

CSRA Inc.

Science, Policy and Mission Programs

3434 Washington Boulevard, 2020D, Arlington, VA 22201

o: +1-571-290-4390 | michael.lengle@csra.com | www.csra.com
CSRA

Think Next. Now.

 Please consider the environment before printing this e-mail

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From: Downing, Donna [mailto:Downing.Donna@epa.gov]
Sent: Thursday, June 01, 2017 6:36 PM
To: Lenge, Michael
Cc: Swackhammer, J-Troy
Subject: Registration for the Pittsburgh meeting

Hi Michael –

I have been asked to speak at the “waters of the US” session at the Pittsburgh conference, presenting on the morning of Wednesday June 14th. I was told to go to the surveymonkey website and register, in addition to the usual travel logistics and hotel arrangements. The travel arrangements are all set, but unfortunately I couldn’t register for the conference because the surveymonkey website was closed. Could you help me out?

Troy Shwackhammer is my OLEM contact here at EPA for the session, and is the session moderator. I’ll cc Troy as an FYI.

Thanks for any help you can offer!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Swackhammer, J-Troy
Sent: Fri 6/2/2017 2:41:36 AM
Subject: Draft slide deck for our July 14 session
NRT-RRT Co-Chairs Mtg June 2017 WOTUS Session.pptx

Donna,

Please see attached for your review.

Thx,

Troy

To: Downing, Donna[Downing.Donna@epa.gov]
From: Shamet, Stefania
Sent: Thur 6/1/2017 9:43:34 PM
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

From: Downing, Donna
Sent: Thursday, June 1, 2017 5:42 PM
To: Shamet, Stefania
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

Donna

-----Original Appointment-----

From: Shamet, Stefania
Sent: Thursday, June 01, 2017 5:42 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

From: Shamet, Stefania
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

To: McGill, Thomas[Mcgill.Thomas@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Weinstock, Larry
Sent: Thur 6/1/2017 3:17:31 PM
Subject: RE: responding to correspondence from the public about WOTUS
Van Dyke AX-17-000-7456.docx

This is what we are using as a response.

Larry Weinstock

Acting Associate Director,

Oceans, Wetlands and Communities Division

Office of Water

202-564-9226

From: McGill, Thomas
Sent: Wednesday, May 31, 2017 6:16 PM
To: Weinstock, Larry <Weinstock.Larry@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: responding to correspondence from the public about WOTUS

Thanks Larry. Apparently OECA redirected it to Region 4 for a response, as it's now assigned to my group. Do you have any templates that you could share for our consideration?

From: Weinstock, Larry
Sent: Wednesday, May 31, 2017 2:09 PM
To: Downing, Donna <Downing.Donna@epa.gov>; McGill, Thomas <Mcgill.Thomas@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell

<Kaiser.Russell@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: responding to correspondence from the public about WOTUS

I already saw this email and had it sent to OECA for response. Since it is an enforcement issue.

Larry Weinstock

Acting Associate Director,

Oceans, Wetlands and Communities Division

Office of Water

202-564-9226

From: Downing, Donna

Sent: Wednesday, May 31, 2017 1:16 PM

To: McGill, Thomas <McGill.Thomas@epa.gov>

Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Eisenberg,
Mindy <Eisenberg.Mindy@epa.gov>

Subject: FW: responding to correspondence from the public about WOTUS

Hi Tom:

I'm forwarding your email to Larry Weinstock, who's coordinating OWOW's WOTUS responses and has a variety of templates. Larry, I'd be happy to help if the incoming doesn't fit well into one of the exiting templates.

Donna

From: McGill, Thomas

Sent: Wednesday, May 31, 2017 1:08 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>

Subject: responding to correspondence from the public about WOTUS

Attached is a letter to the Administrator regarding WOTUS, which our Region is planning to respond. Are there specific templates that the Agency is using for letters to the public on this matter? Of course we can use our judgment on how to respond, but if there's a template we need to use please let me know. Thanks. Tom

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 6/1/2017 2:08:19 PM
Subject: FW: congressional briefing.pptx
WOTUS 1986 vs Current Implementation with Guidance.pptx

Deliberative Process / Ex. 5

-----Original Message-----

From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Thursday, June 01, 2017 8:17 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: congressional briefing.pptx

Thanks, Damaris.

Deliberative Process / Ex. 5

Stacey M. Jensen
HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314
(202) 761-5856

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]
Sent: Thursday, June 01, 2017 12:57 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Barger, Cindy S <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: [Non-DoD Source] congressional briefing.pptx

All, in this morning's (Wednesday's) political meeting, EPA's Congressional liaison Denis Borum indicated he could use a short briefing for members of Congress, focusing on step one.

This is a first draft - I adapted the federalism powerpoint.

Deliberative Process / Ex. 5

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]
From: McGill, Thomas
Sent: Wed 5/31/2017 5:07:56 PM
Subject: responding to correspondence from the public about WOTUS
17-000-8994.pdf

Attached is a letter to the Administrator regarding WOTUS, which our Region is planning to respond. Are there specific templates that the Agency is using for letters to the public on this matter? Of course we can use our judgment on how to respond, but if there's a template we need to use please let me know. Thanks. Tom

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Murphy, Eddie (PHMSA)[Eddie.Murphy@dot.gov]
From: Swackhammer, J-Troy
Sent: Wed 5/31/2017 3:23:32 PM
Subject: Defn of Nav Waters in 33 CFR part 194

FYI.

Here's the applicability statement:

§ 194.3 Applicability.

This part applies to an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to cause substantial harm, or significant and substantial harm to the environment by discharging oil into or on any navigable waters of the United States or adjoining shorelines.

Here's the definition of navigable waters in DOT-PHMSA's pipeline response plan rule:

Navigable waters means the waters of the United States, including the territorial sea and such waters as lakes, rivers, streams; waters which are used for

recreation; and waters from which fish or shellfish are taken and sold in interstate or foreign commerce.

See: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol3/pdf/CFR-2011-title49-vol3-part194.pdf>

I've reached out to DOT-PHMSA to brief them on where we are in the process. My coordination contact is Eddie Murphy at DOT-PHMSA.

Eddie.Murphy@dot.gov

Troy

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]
From: McGill, Thomas
Sent: Tue 5/30/2017 9:33:18 PM
Subject: status of WOTUS for the Southeast State Commissioners

Deliberative Process / Ex. 5

Thanks!

Tom

From: Eisenberg, Mindy
Sent: Wednesday, May 3, 2017 9:45 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew

<Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>; EPA Wetlands Managers <EPA_Wetlands_Managers@epa.gov>; Allnutt, David <Allnutt.David@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: WOTUS desk statement

Hi All,

As promised, attached is the OPA approved desk statement for submitting the step 1 rule to OMB. We will be working on additional talking points and FAQs to share with you soon. Also,

Deliberative Process / Ex. 5

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 12:00 PM

To: Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; Morgan, James

Cc: Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, May 04, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Deliberative Process / Ex. 5

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/30/2017 9:15:19 PM
Subject: Re: ocir heads-up calls for WOTUS2 proposal

Deliberative Process / Ex. 5

Damaris

Sent from my iPhone

On May 30, 2017, at 5:06 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

I don't think it matters if Tate vs. Mike calls Alex but I think we do need to have a script (for all).

Mindy Eisenberg

Acting Director, Oceans, Wetlands and Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris

Sent: Tuesday, May 30, 2017 5:05 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna

<Downing.Donna@epa.gov>

Subject: ocir heads-up calls for WOTUS2 proposal

Deliberative Process / Ex. 5

Damaris

Sent from my iPhone

Begin forwarded message:

From: "Bowles, Jack" <Bowles.Jack@epa.gov>

Date: May 30, 2017 at 4:50:32 PM EDT

To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>

Cc: "Hanson, Andrew" <Hanson.Andrew@epa.gov>, "Dennis, Allison" <Dennis.Allison@epa.gov>

Subject: RE: thinking through heads-up calls for WOTUS2 proposal

Hi Damaris,

Deliberative Process / Ex. 5

Jack

From: Christensen, Damaris

Sent: Tuesday, May 30, 2017 1:32 PM

To: Bowles, Jack <Bowles.Jack@epa.gov>

Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: RE: thinking through heads-up calls for WOTUS2 proposal

Jack,

Deliberative Process / Ex. 5

Damaris

From: Bowles, Jack

Sent: Friday, May 26, 2017 1:53 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: RE: thinking through heads-up calls for WOTUS2 proposal

Hi Damaris,

Deliberative Process / Ex. 5

Jack

From: Christensen, Damaris

Sent: Friday, May 26, 2017 1:03 PM

To: Bowles, Jack <Bowles.Jack@epa.gov>

Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>

Subject: thinking through heads-up calls for WOTUS2 proposal

Hey Jack,

Deliberative Process / Ex. 5

Damaris

Heads-up calls from

Mike:

-
- **Deliberative Process / Ex. 5**
-
-

Benita:

-
- **Deliberative Process / Ex. 5**
-

John:

-
-
- **Deliberative Process / Ex. 5**
-
-

Mindy:

-
-
- **Deliberative Process / Ex. 5**
-
-

To: Bennett, Brittany[bennett.brittany@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Hurl, Kathy[Hurl.Kathy@epa.gov]
Cc: Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Kwok, Rose
Sent: Tue 5/30/2017 6:10:37 PM
Subject: RE: coverage for upcoming meetings

I will add you as a host in Adobe Connect for the 7th...Kathy set up the one for the 2nd.

From: Bennett, Brittany
Sent: Tuesday, May 30, 2017 1:57 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>
Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: coverage for upcoming meetings

Yes, I can do both the 2nd and the 7th. Rose, could you please forward me the registration links for those? I'll pull up the Run of Show documents from previous webinars.

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Christensen, Damaris
Sent: Tuesday, May 30, 2017 12:46 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: coverage for upcoming meetings

Hey all – Adding Kathy and Mike and Brittany and Dolores, dropping Mindy

June is busy and Rose and Kathy need some coverage!

June 2, WSWC webinar –

Kathy has set up the webinar link and John will be speaking, but we need someone to get the Proxima and log into the webinar and run the call, and someone to pull up questions and sit near John. **Brittany**, can you be the primary computer/Proxima and I'll be the secondary (because of the issues I've had downloading the latest software)? If so, can you let Kathy know so she can send you all the relevant info including whatever you need to log into the webinar setup?

Tuesday, June 6 @ 11:30, Region 6 RTOC call:

R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. Rose will send them the slides in advance.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Wednesday, June 7 @ 11, Region 4 RTOC webinar

Brittany and Dolores, can one of you two run the webinar itself? Rose has already set up the link.

Deliberative Process / Ex. 5

We'll likely need notes at all these, also.

Damaris

From: Kwok, Rose

Sent: Friday, May 26, 2017 11:36 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Coverage for 6/6 and 6/7 RTOCs

Hi Folks,

We are confirmed for both the Region 6 and the Region 4 RTOCs on June 6 and 7, respectively. I will be out on travel that week to the SFS conference in Raleigh. I might be able to call in (I have to check the schedule for Wed, but that might be the same time as my special session...if it is, I obviously can't call in) but I think it's best if someone who can be in the office lead the presentation. Damaris or Donna, will you be able to present and the lead? Details are below. The Region 4 call is at the same time as our regular after 10 am leadership meeting:

Region 6 RTOC: Tuesday, June 6 @ 11:30

Their call begins at 11:30 AM on 6/6. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer that we send them the slides in advance and to not do a webinar. I will send out the slides next week.

Region 4 RTOC: Wednesday, June 7 @ 11

Their call begins at 11 AM, and we can have most of the hour. We'll be doing a webinar, and I can make Damaris and Donna the hosts (just make sure that you know your Adobe Connect password in advance...you can reset it if needed). I will put the slides on SharePoint and send around the link.

Thanks!! I'd owe you gelato or sorbetto!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Hurlid, Kathy[Hurlid.Kathy@epa.gov]
Cc: Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Bennett, Brittany
Sent: Tue 5/30/2017 5:57:19 PM
Subject: RE: coverage for upcoming meetings

Yes, I can do both the 2nd and the 7th. Rose, could you please forward me the registration links for those? I'll pull up the Run of Show documents from previous webinars.

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Christensen, Damaris
Sent: Tuesday, May 30, 2017 12:46 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: coverage for upcoming meetings

Hey all – Adding Kathy and Mike and Brittany and Dolores, dropping Mindy

June is busy and Rose and Kathy need some coverage!

June 2, WSWC webinar –

Kathy has set up the webinar link and John will be speaking, but we need someone to get the

Proxima and log into the webinar and run the call, and someone to pull up questions and sit near John. **Brittany**, can you be the primary computer/Proxima and I'll be the secondary (because of the issues I've had downloading the latest software)? If so, can you let Kathy know so she can send you all the relevant info including whatever you need to log into the webinar setup?

Tuesday, June 6 @ 11:30, Region 6 RTOC call:

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

We'll likely need notes at all these, also.

Damaris

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Sent: Friday, May 26, 2017 11:36 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Coverage for 6/6 and 6/7 RTOCs

Hi Folks,

We are confirmed for both the Region 6 and the Region 4 RTOCs on June 6 and 7, respectively. I will be out on travel that week to the SFS conference in Raleigh. I might

be able to call in (I have to check the schedule for Wed, but that might be the same time as my special session...if it is, I obviously can't call in) but I think it's best if someone who can be in the office lead the presentation. Damaris or Donna, will you be able to present and the lead? Details are below. The Region 4 call is at the same time as our regular after 10 am leadership meeting:

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Region 4 RTOC: Wednesday, June 7 @ 11

Their call begins at 11 AM, and we can have most of the hour. We'll be doing a webinar, and I can make Damaris and Donna the hosts (just make sure that you know your Adobe Connect password in advance...you can reset it if needed). I will put the slides on SharePoint and send around the link.

Thanks!! I'd owe you gelato or sorbetto!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Kwok, Rose
Sent: Tue 5/30/2017 4:07:52 PM
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting
Agenda -- WOTUS 31 May 2017 RMK.docx

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 30, 2017 11:55 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 30, 2017 11:54 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Deliberative Process / Ex. 5

Hope you had a lovely trip!

D

From: Downing, Donna
Sent: Tuesday, May 30, 2017 11:08 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Hi Mindy, Rose, and Damaris:

Attached is a draft agenda for tomorrow's 10am WOTUS-2 leadership meeting.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

PS – FYI, installing Windows 10 took 2 ½ hours. Just finished.

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: McDavit, Michael W.[Mcdavit.Michael@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/30/2017 4:04:15 PM
Subject: RE: "What makes a comment significant?" meeting 1

Thanks, Mike.

Deliberative Process / Ex. 5

Damaris

From: McDavit, Michael W.
Sent: Tuesday, May 30, 2017 8:05 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Subject: RE: "What makes a comment significant?" meeting 1

Hi Damaris,

Deliberative Process / Ex. 5

Thanks,

Mike

-----Original Appointment-----

From: Christensen, Damaris

Sent: Saturday, May 27, 2017 12:13 AM

To: Downing, Donna; Wehling, Carrie; Wendelowski, Karyn; Kupchan, Simma; Schaller, Andrea; McDavit, Michael W.; Chemerys, Ruth; Somerville, Eric

Subject: "What makes a comment significant?" meeting 1

When: Friday, June 02, 2017 10:00 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7201/DC-CCW-OWOW

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/30/2017 3:55:06 PM
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 30, 2017 11:54 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Deliberative Process / Ex. 5

Hope you had a lovely trip!

D

From: Downing, Donna
Sent: Tuesday, May 30, 2017 11:08 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Hi Mindy, Rose, and Damaris:

Attached is a draft agenda for tomorrow's 10am WOTUS-2 leadership meeting. The agenda

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

Deliberative Process / Ex. 5

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/30/2017 3:53:42 PM
Subject: RE: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting
Agenda -- WOTUS 31 May 2017.docx

Deliberative Process / Ex. 5

Hope you had a lovely trip!

D

From: Downing, Donna
Sent: Tuesday, May 30, 2017 11:08 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting

Hi Mindy, Rose, and Damaris:

Attached is a draft agenda for tomorrow's 10am WOTUS-2 leadership meeting.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

Deliberative Process / Ex. 5

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Fontenot, Alison[Fontenot.Alison@epa.gov]; Nystrom, Thomas[Nystrom.Thomas@epa.gov]
From: Martinez, Maria
Sent: Tue 5/30/2017 2:27:12 PM
Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Thank you Rose. We will plan on being on the call as well.

From: Kwok, Rose
Sent: Tuesday, May 30, 2017 9:26 AM
To: Martinez, Maria <Martinez.Maria@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Fontenot, Alison <Fontenot.Alison@epa.gov>; Nystrom, Thomas <Nystrom.Thomas@epa.gov>
Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Hi Maria,

Sorry, I think that I mentioned on the last informal workgroup call that we would be presenting at some of the Regional RTOCs.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Martinez, Maria
Sent: Tuesday, May 30, 2017 10:18 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Fontenot, Alison <Fontenot.Alison@epa.gov>; Nystrom, Thomas
<Nystrom.Thomas@epa.gov>

Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Mindy and Rose,

Deliberative Process / Ex. 5

Please advise.

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

-----Original Appointment-----

From: Kwok, Rose

Sent: Thursday, May 25, 2017 12:11 PM

To: Eisenberg, Mindy; Downing, Donna; Christensen, Damaris; Wesson, Dolores; Peterson, Carol; McDavit, Michael W.; Cindy Barger; Jensen, Stacey M CIV USARMY HQDA (US); Gude, Karen; Martinez, Maria; Fontenot, Alison; Charles Smith

Subject: HOLD for Region 6 RTOC WOTUS Presentation

When: Tuesday, June 06, 2017 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: : **Nonresponsive Conference Code/ Ex. 6**

Hold for the Region 6 RTOC. **I will not be able to give this presentation** since I will be on travel. Please let me know if there are others that should be invited.

Their call begins at 11:30 AM on 6/6, which hopefully should work for everyone. R6 can provide 20 minutes at the start of their RTOC call to discuss WOTUS. They prefer that we send them the slides in advance and to not do a webinar.

EOP / Ex. 6 I've reserved Potomac Conference Room.

To: Martinez, Maria[Martinez.Maria@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
Cc: Fontenot, Alison[Fontenot.Alison@epa.gov]; Nystrom, Thomas[Nystrom.Thomas@epa.gov]
From: Kwok, Rose
Sent: Tue 5/30/2017 2:25:41 PM
Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Hi Maria,

Deliberative Process / Ex. 5

From: Martinez, Maria
Sent: Tuesday, May 30, 2017 10:18 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Cc: Fontenot, Alison <Fontenot.Alison@epa.gov>; Nystrom, Thomas
<Nystrom.Thomas@epa.gov>
Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Mindy and Rose,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

-----Original Appointment-----

From: Kwok, Rose

Sent: Thursday, May 25, 2017 12:11 PM

To: Eisenberg, Mindy; Downing, Donna; Christensen, Damaris; Wesson, Dolores; Peterson, Carol; McDavit, Michael W.; Cindy Barger; Jensen, Stacey M CIV USARMY HQDA (US); Gude, Karen; Martinez, Maria; Fontenot, Alison; Charles Smith

Subject: HOLD for Region 6 RTOC WOTUS Presentation

When: Tuesday, June 06, 2017 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Nonresponsive Conference Code/ Ex. 6 DCRoomWest7301/DC-CCW-OWOW

Deliberative Process / Ex. 5

Conference Number: Nonresponsive Conference Code/ Ex. 6. I've reserved Potomac Conference Room.

To: Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Fontenot, Alison[Fontenot.Alison@epa.gov]; Nystrom, Thomas[Nystrom.Thomas@epa.gov]
From: Martinez, Maria
Sent: Tue 5/30/2017 2:17:40 PM
Subject: RE: HOLD for Region 6 RTOC WOTUS Presentation

Mindy and Rose,

Deliberative Process / Ex. 5

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

-----Original Appointment-----

From: Kwok, Rose

Sent: Thursday, May 25, 2017 12:11 PM

To: Eisenberg, Mindy; Downing, Donna; Christensen, Damaris; Wesson, Dolores; Peterson, Carol; McDavit, Michael W.; Cindy Barger; Jensen, Stacey M CIV USARMY HQDA (US); Gude, Karen; Martinez, Maria; Fontenot, Alison; Charles Smith

Subject: HOLD for Region 6 RTOC WOTUS Presentation

When: Tuesday, June 06, 2017 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: : Nonresponsive Conference Code/ Ex. 6 r DCRoomWest7301/DC-CCW-OWOW

Deliberative Process / Ex. 5

Conference Number: Nonresponsive Conference Code/ Ex. 6 I've reserved Potomac Conference Room.

To: Goodwin, Kara[goodwin.kara@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 5/23/2017 7:06:22 PM
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Hi Kara,

Deliberative Process / Ex. 5

Please let us know if you have questions. I also forwarded the invitation to you.

Thanks,

Rose

From: Goodwin, Kara
Sent: Tuesday, May 23, 2017 2:34 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Hi Rose,

Nice to meet you last week. Can you please forward me the invite for the meetings and the link to the SharePoint site? And if there's any other information you think would help me get up to speed, send that along too!

Thanks,
Kara Goodwin

From: Kwok, Rose
Sent: Thursday, May 18, 2017 11:50 AM
To: Goodwin, Kara <goodwin.kara@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Hi Kara,

We heard that you would like to be added to the “waters of the United States” rulemaking workgroup.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks, please let us know if you have any questions.

From: Nelson, Tomeka

Sent: Thursday, May 11, 2017 1:46 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

FYI

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy
Sent: Thursday, May 11, 2017 1:13 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Cc: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Please let Rose Kwok and Donna Downing know that Kara has been added to both WOTUS actions.

Sandy

From: Flaharty, Stephanie
Sent: Tuesday, May 09, 2017 6:55 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Sandy,

We would like to participate on **OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."** Please add Kara Goodwin to the workgroup. Are there any background materials for new WG members?

Thanks,

Steph

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Goodwin, Kara

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 7 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Goodwin, Kara

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Goodwin, Kara
Sent: Tue 5/23/2017 6:33:52 PM
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Hi Rose,

Nice to meet you last week. Can you please forward me the invite for the meetings and the link to the SharePoint site? And if there's any other information you think would help me get up to speed, send that along too!

Thanks,
Kara Goodwin

From: Kwok, Rose
Sent: Thursday, May 18, 2017 11:50 AM
To: Goodwin, Kara <goodwin.kara@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Hi Kara,

We heard that you would like to be added to the "waters of the United States" rulemaking workgroup.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks, please let us know if you have any questions.

From: Nelson, Tomeka
Sent: Thursday, May 11, 2017 1:46 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

FYI

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy
Sent: Thursday, May 11, 2017 1:13 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Cc: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Please let Rose Kwok and Donna Downing know that Kara has been added to both WOTUS actions.

Sandy

From: Flaharty, Stephanie
Sent: Tuesday, May 09, 2017 6:55 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Sandy,

We would like to participate on **OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."** Please add Kara Goodwin to the workgroup. Are there any background materials for new WG members?

Thanks,

Steph

To: Downing, Donna[Downing.Donna@epa.gov]
From: Hough, Palmer
Sent: Tue 5/23/2017 5:48:20 PM
Subject: RE: Roy Gardner's presentation from May 2017 Banking Conference: What's Up With WOTUS

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, May 23, 2017 1:34 PM
To: Hough, Palmer <Hough.Palmer@epa.gov>
Subject: RE: Roy Gardner's presentation from May 2017 Banking Conference: What's Up With WOTUS

Hi Palmer:

Deliberative Process / Ex. 5

Donna

-----Original Appointment-----

From: Hough, Palmer
Sent: Monday, May 22, 2017 11:43 AM
To: OW-OWOW-WD; Auerbach, Daniel; Bennett, Brittany; Bowers, Kathleen; Christensen, Damaris; Downing, Donna; FertikEdgerton, Rachel; Harrington, Rachel; Hunter, Christopher; Irby, Virginia; Kaiser, Russell; Kwok, Rose; Landers, Timothy; Linn, Jennifer; Miller, Clay; Moulta-Ali, Abu; Topping, Brian
Subject: Roy Gardner's presentation from May 2017 Banking Conference: What's Up With WOTUS
When: Thursday, May 25, 2017 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7114M/DC-CCW-OWOW

Roy Gardner gave an interesting presentation on the status of WOTUS at the National Mitigation and Ecosystem Banking Conference earlier this month in Sacramento, CA. We will share the audio and slides from this presentation for those who are interested.

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 7 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Swackhammer, J-Troy

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 5/23/2017 4:50:33 PM
Subject: RE: Responding to CWR-related 10am meeting requests

Yes, Mindy told me that we should cancel this week's 11 am post-leadership meeting. Thanks!

From: Downing, Donna
Sent: Tuesday, May 23, 2017 12:50 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Responding to CWR-related 10am meeting requests

Hey Rose –

This refers to the post-leadership Wednesday meeting at 11am-ish, right? Wanted to check before I cancelled this week's.

Donna

From: Kwok, Rose
Sent: Monday, May 22, 2017 2:56 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; David.F.Dale@usace.army.mil; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Guignet, Dennis <Guignet.Dennis@epa.gov>

Subject: RE: Responding to CWR-related 10am meeting requests

Hi Folks,

We are cancelling this Wednesday's meeting. I'll send out a reminder on Wednesday, but in the meantime, please delete this week's meeting from your calendar. Again, I'll try to have Donna cancel it.

Thaks!

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 12:36 PM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Wendelowski, Karyn; Flannery-Keith, Erin; Swackhammer, J-Troy; Principe, Vanessa; Clark, Becki; Jennings, Kim; David.F.Dale@usace.army.mil; Keating, Jim; Frazer, Brian; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Ludwig-Monty, Sarah; Neugeboren, Steven

Cc: Peck, Gregory; Wesson, Dolores; Massey, Matt; Guignet, Dennis

Subject: Responding to CWR-related 10am meeting requests

When: Wednesday, May 24, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Nonresponsive Conference Code/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Brush, Jason[Brush.Jason@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Louis, Gail[Louis.Gail@epa.gov]
From: Kwok, Rose
Sent: Mon 5/22/2017 11:09:22 PM
Subject: RE: WOTUS2 tribal participation in Parker, AZ on 5/18

Thanks – helpful for our notes

From: Brush, Jason
Sent: Monday, May 22, 2017 6:58 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Louis, Gail <Louis.Gail@epa.gov>
Subject: WOTUS2 tribal participation in Parker, AZ on 5/18

FYI

Jason A. Brush
Acting Assistant Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (WTR-2)
San Francisco, CA 94105

~~~~~  
**desk: 415.972.3483**  
~~~~~

From: Louis, Gail
Sent: Monday, May 22, 2017 3:19 PM
To: Brush, Jason <Brush.Jason@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>
Subject: Fwd: Talking Points for water workshop

FYI -

Sent from my iPhone

Begin forwarded message:

From: "Wilson, Stephanie" <Wilson.Stephanie@epa.gov>
Date: May 22, 2017 at 2:39:17 PM PDT
To: "Louis, Gail" <Louis.Gail@epa.gov>
Subject: RE: Talking Points for water workshop

Gail,

There were only 4 who sat in on the webinar.

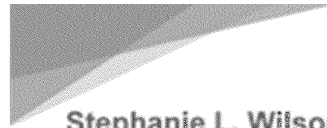
Cliff Banuelos: Elko Band

Frank Shoshone: Timbisha

Thomas Siyuja, Jr.: Havasupai

Joseph Miller: Big Pine

None asked any questions. Let me know if you need anything more. Stephanie



Stephanie L. Wilson
EPA, Region 9
Tribal Water Section, WTR-3-4
PO Box 11
Carson City, NV 89702
(775) 885-6190
wilson.stephanie@epa.gov

From: Louis, Gail
Sent: Thursday, May 18, 2017 10:31 AM
To: Wilson, Stephanie <Wilson.Stephanie@epa.gov>
Subject: RE: Talking Points for water workshop

Hi Stephanie – Hope all is going well. Thx for “emcee’ing” the webinar viewing.

Can you let me know who participated and if there are any particular comments or discussion to pass along to HQs (that weren’t voiced during the webinar)?

Many thanks,

~ Gail

p.s. Hope the WQS presentations go well.

~\.,.,.,>(((o>~\.,.,.,>(((o>~\.,.,.,>(((o>

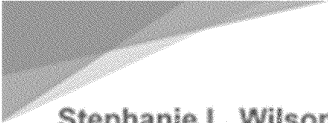
Gail Louis, Supervisor

Tribal Water Section (WTR-3-4)

2-3467

From: Wilson, Stephanie
Sent: Thursday, May 18, 2017 9:16 AM
To: Louis, Gail <Louis.Gail@epa.gov>
Subject: RE: Talking Points for water workshop

Thank you!



Stephanie L. Wilson
EPA, Region 9
Tribal Water Section, WTR-3-4
PO Box 11
Carson City, NV 89702
(775) 885-6190
wilson.stephanie@epa.gov

From: Louis, Gail
Sent: Thursday, May 18, 2017 7:47 AM
To: Wilson, Stephanie <Wilson.Stephanie@epa.gov>

Cc: Angeles, Danielle <Angeles.Danielle@epa.gov>; Johnson, AudreyL <Johnson.AudreyL@epa.gov>

Subject: Fwd: Talking Points for water workshop

Stephanie - here are some talking points from

HQs on WOTUS rule making

Sent from my iPhone

Begin forwarded message:

From: "Louis, Gail" <Louis.Gail@epa.gov>

Date: May 18, 2017 at 7:45:13 AM PDT

To: "Angeles, Danielle" <Angeles.Danielle@epa.gov>, "Johnson, AudreyL" <Johnson.AudreyL@epa.gov>

Cc: "Brush, Jason" <Brush.Jason@epa.gov>, "Amato, Paul" <Amato.Paul@epa.gov>

Subject: Fwd: Talking Points for water workshop

FYI (I haven't read these yet)

Sent from my iPhone

Begin forwarded message:

From: "Kwok, Rose" <Kwok.Rose@epa.gov>

Date: May 18, 2017 at 7:42:10 AM PDT

To: "Brush, Jason" <Brush.Jason@epa.gov>, "Amato, Paul" <Amato.Paul@epa.gov>, "Louis, Gail" <Louis.Gail@epa.gov>

Subject: FW: Talking Points for water workshop

My apologies – I meant to send this to you earlier, but I only just remembered that Mindy hadn't approved them. I think it's fine to use them as talking points, remembering that the TPs are not for distribution. Thanks and sorry for the delay!

To: Hurd, Kathy[Hurd.Kathy@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Mon 5/22/2017 7:57:18 PM
Subject: state federalism outreach.docx
[state federalism outreach.docx](#)

Deliberative Process / Ex. 5

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Fri 5/19/2017 9:45:05 PM
Subject: Re: A policy option sketch
[AuerbachWOTUSoption.docx](#)

Deliberative Process / Ex. 5

From: Auerbach, Daniel
Sent: Friday, May 19, 2017 3:38 PM
To: Kwok, Rose; Christensen, Damaris
Cc: Downing, Donna
Subject: A policy option sketch

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Fri 5/19/2017 7:38:23 PM
Subject: A policy option sketch
[AuerbachCWAjurisRecommendations.docx](#)

Deliberative Process / Ex. 5

To: Goodwin, Kara[goodwin.kara@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 5/18/2017 3:49:30 PM
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Hi Kara,

We heard that you would like to be added to the “waters of the United States” rulemaking workgroup.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks, please let us know if you have any questions.

From: Nelson, Tomeka
Sent: Thursday, May 11, 2017 1:46 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

FYI

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy
Sent: Thursday, May 11, 2017 1:13 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Cc: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Please let Rose Kwok and Donna Downing know that Kara has been added to both WOTUS actions.

Sandy

From: Flaharty, Stephanie
Sent: Tuesday, May 09, 2017 6:55 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Sandy,

We would like to participate on **OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."** Please add Kara Goodwin to the workgroup. Are there any background materials for new WG members?

Thanks,

Steph

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Wed 5/17/2017 7:38:46 PM
Subject: WOTUS2 EROM analysis
[wotus2erom.html](#)

Deliberative Process / Ex. 5

From: Massey, Matt
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Accepted: FW: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

Your meeting was forwarded

Doley, Todd has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Occurs every Wednesday from 11:00 AM to 12:00 PM effective 4/12/2017 until 7/19/2017. There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Massey, Matt

Guignet, Dennis

Hewitt, Julie

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Cook-Shyovitz, Becky
Sent: Tue 5/16/2017 11:51:43 AM
Subject: Re: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

Yes - the press release included the Branstad letter (but not the enclosure)

On May 15, 2017, at 7:52 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Becky – do you know if the letter to the governors was attached to the press release when the press release went out? Thanks!

Rose

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

From: Cathy Milbourn [<mailto:milbourn.cathy@epa.gov>]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining "Waters of the U.S."

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE

May 9, 2017

EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

“EPA is restoring states’ important role in the regulation of water” – Administrator Pruitt

WASHINGTON – U.S. Environmental Protection Agency and the U.S. Army sent a letter to governors today soliciting input from states on a new definition of protected waters that is in-line with a Supreme Court Justice Antonin Scalia’s opinion in the 2006 *Rapanos v. United States* case. Scalia’s definition explains that federal oversight should extend to “relatively permanent” waters and wetlands with a “continuous surface connection” to large rivers and streams.

“EPA is restoring states’ important role in the regulation of water,” **said EPA Administrator Scott Pruitt**. “Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.”

“The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public,” **said Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works**.

The Clean Water Act asserts federal control over “traditionally navigable waters” without providing clarity or details about the law’s scope. President Donald Trump signed an executive order on February 28, 2017 to direct federal agencies to roll back and replace the Obama Administration’s Clean Water Rule – also known as the “Waters of the U.S.” or WOTUS – to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution.

To meet the objectives of the executive order, federal agencies are following a two-step process that will provide as much certainty as possible, as quickly as possible, to the regulated community and the public during the development of the replacement rule.

The first step is to revise the Code of Federal Regulations to re-codify the definition of “Waters of the United States” which currently governs administration of the Clean Water Act, in light of a decision by the U.S. Court of Appeals for the Sixth Circuit staying a definition of “Waters of the United States” promulgated by the agencies in 2015. This action will simply make the text of the Code of Federal Regulations reflect the definition

currently in effect under the Sixth Circuit stay. This action, when final, will not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance documents, and longstanding practice.

The second step will be a public notice-and-comment rulemaking involving a substantive reevaluation and revision of the definition of “Waters of the U.S.” in accordance with the executive order. The letter sent to governors today is seeking input on the second step of the process.

R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking [here](#).
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Cook-Shyovitz, Becky[Cook-Shyovitz.Becky@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Kwok, Rose
Sent: Mon 5/15/2017 11:52:42 PM
Subject: RE: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

Becky – do you know if the letter to the governors was attached to the press release when the press release went out? Thanks!

Rose

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

From: Cathy Milbourn [<mailto:milbourn.cathy@epa.gov>]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

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“EPA is restoring states’ important role in the regulation of water” – Administrator Pruitt

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“EPA is restoring states’ important role in the regulation of water,” **said EPA Administrator Scott Pruitt**. “Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.”

"The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public," **said Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works.**

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The first step is to revise the Code of Federal Regulations to re-codify the definition of “Waters of the United States” which currently governs administration of the Clean Water Act, in light of a decision by the U.S. Court of Appeals for the Sixth Circuit staying a definition of “Waters of the United States” promulgated by the agencies in 2015. This action will simply make the text of the Code of Federal Regulations reflect the definition currently in effect under the Sixth Circuit stay. This action, when final, will not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance documents, and longstanding practice.

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R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking [here](#).
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

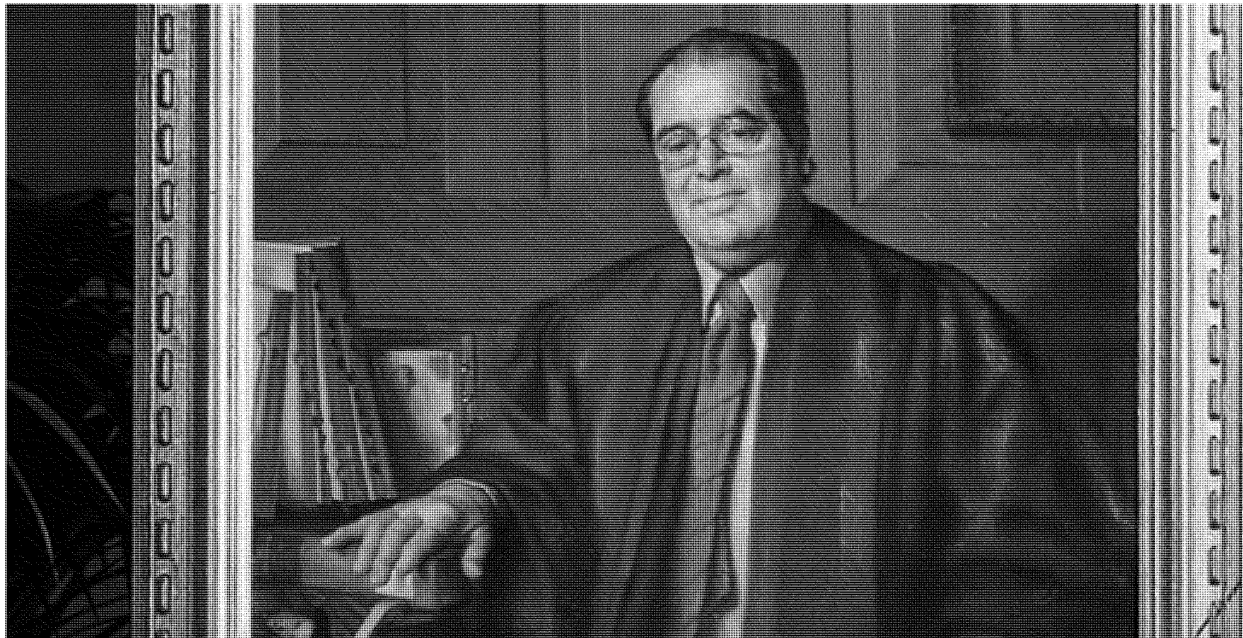
To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Kwok, Rose
Sent: Mon 5/15/2017 11:00:03 PM
Subject: Webster's 2nd

<https://www.eenews.net/stories/1060054554>

Will Scalia's dictionary haunt Trump's WOTUS overhaul?

Ariel Wittenberg, E&E News reporter

Greenwire: Monday, May 15,
2017



[+] The late Justice Antonin Scalia poses in his official Supreme Court portrait with his beloved *Webster's Second*. Photo by Aude Guerrucci/Pool/Sipa USA, courtesy of AP Images.

When Supreme Court Justice Antonin Scalia had to decide in 2006 which wetlands and waterways make up the "waters of the U.S." protected by the Clean Water Act, he reached for his trusty *Webster's New International Dictionary: Second Edition*.

What, he asked *Webster's*, is the meaning of the word "waters"?

The dictionary, which the late conservative icon loved so much it appears in his official Supreme Court portrait, was

the basis for Scalia's opinion in *Rapanos v. United States*, concluding that Clean Water Act protection extends only to relatively permanent surface waters and wetlands connected to larger water bodies.

Sidelined for years by legal precedent, his plurality opinion in the court's muddled 4-1-4 decision is now the Trump administration's beacon as it rewrites the regulatory rulebook to align with the vision of Scalia, who died early last year.

But there's a problem: If Scalia wanted to know what Congress intended when the Clean Water Act was written in 1972, he used the wrong dictionary,

Published in 1931, *Webster's Second* was replaced in 1961 by the *Third New International Dictionary*. That volume was the most recent edition when Congress wrote and passed the landmark water law.

It turns out that *Webster's Third* diverges from its predecessor in many ways, including the definition of "waters."

The Scalia-favored second edition says waters are "found in streams and bodies forming geographical features such as oceans, rivers [and] lakes."

But *Webster's Third* takes a different tack, defining waters as "the water occupying or flowing in a particular bed."

Legal experts say the difference between those definitions is critical in the fierce debate over which waters are covered by federal law.

Scalia used his dictionary to exclude intermittent streams and wetlands that are only wet after heavy rains.

Webster's Third weakens the argument for that exclusion, Stetson University College of Law professor Paul Boudreaux said.

"It would be much harder to come up with the conclusion that only things like permanent standing or flowing bodies of water can be covered," he said. "Even a wetland that occurs less than three months out of the year is 'water occupying a bed.'"

Jonathan Adler, a law professor at Case Western Reserve University, agreed that *Webster's Third* would provide U.S. EPA and the Army Corps of Engineers with more leeway in regulating wetlands and streams.

"It would certainly strengthen the claim that it is ambiguous how far 'waters of the U.S.' could reach," he said.

'The Truth about Words'

It's no fluke that Scalia used *Webster's Second* in *Rapanos*.

An avid proponent of "textualism," Scalia promoted the idea that legal disputes should be resolved by interpreting statutes' "ordinary meaning."

And while he often relied on *Webster's Second*, Scalia vocally disliked *Webster's Third*, which he called "not a very good dictionary" after it was used in a 2012 oral argument.

He also advised lawyers against using the "notoriously permissive" *Webster's Third* in a 2013 article he co-wrote about proper dictionary use in legal arguments.

mineral salts and hence of medicinal value, to drink or bathe in; as, to take the *waters* at Karlsbad. **b** The quantity of such liquid used in or for one process, as of rinsing clothes; as, washed in three *waters*. **c** As found in streams and bodies forming geographical features such as oceans, rivers, lakes; the sea, as distinguished from land and air; as, both by land and *water*; it never enters salt *waters*; also, with *the*, a particular ocean or stream separating two land regions, esp. in the United States, the Atlantic Ocean, in London, the Thames; as, living on the other side of the *water*; often *pl.*, the flowing or moving masses, as of waves or floods, making up such streams or bodies; as, to harness the *waters* of Niagara; also, a particular maritime region; as, in Chinese *waters*. **d** Depth of such a stream or body, esp. for navigating purposes; as, a boat draws twelve feet

[+]1 How the Scalia-favored *Webster's Second* defines "waters." Courtesy of Merriam-Webster.

Webster's Third, he wrote, is "to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequately usage notes."

Scalia was not alone in criticizing the dictionary.

The New York Times and Associated Press both shunned the volume when it debuted in 1961.

Until then, dictionaries told the public how words should be used. *Webster's Third* shifted the paradigm, defining words as they were actually being used, based on more than 17 million citations in books and periodicals.

The result was "an evidence-based dictionary" that scandalized some by including words like "ain't" and "irregardless," explained Merriam-Webster Editor at Large Peter Sokolowski.

"The point was, we wanted to tell the truth about words," he said. "We had a lot of evidence for including those words, but people still thought it was erroneous."

The dictionary was celebrated by lexicographers for imbuing words with richer meanings. *Webster's Third*, for example, was the first dictionary to include not just the geographic definition of the word "arctic" but also its figurative use in describing frigid weather.

for remedial purposes : WATERING PLACE **2** : a particular quantity or mass of water: as **a** : a portion of water to drink (brought her ~ in a silver cup) **b** (1) *waters pl* : the water occupying or flowing in a particular bed (the limpid ~s of a mountain brook) (2) *chiefly Brit* : a body of still fresh water : LAKE, POND, POOL (3) *chiefly Scot* : STREAM, RIVER, also : land abutting a stream : the bank of a stream **c** : a portion of water for a particular use — usu. used in *pl.* (wash the greens in three ~s) **d** : a quantity or depth of water adequate for

[+]1 "Waters" as defined by the updated *Webster's Third*. Courtesy of Merriam-Webster.

Though the dictionary did include "usage notes" advising readers against using terms like "irregardless," it wasn't enough to satisfy critics.

Scalia's distaste for *Webster's Third* made headlines in 1994 after he slammed the dictionary in his *MCI v. AT&T* opinion, catching the attention of then-Merriam-Webster Editor-in-Chief Fred Mish.

That contract dispute hinged on the phrase "modify any requirement," with AT&T claiming the word "modify" would allow only an incremental change. MCI, relying on *Webster's Third*, argued a more substantial change was allowed.

Scalia sided with AT&T, calling *Webster's Third* "peculiar" because it said "modify" could signal either an incremental or substantial change.

"When the word 'modify' has come to mean both 'to change in some respects' and 'to change fundamentally,' it will in fact mean neither of those things," Scalia wrote, adding that the dictionary must have based its definition on "intentional distortions, or simply careless or ignorant misuse."

In fact, the definitions were based on how novelist T.S. Eliot and linguist Edward Sapir used the word, Mish told *New York Times* language maven William Safire for a 1994 column.

"If Justice Scalia wants to call this 'careless or ignorant misuse,' well, it's a free country," Mish said.

Bigger issues

Scalia's preference for one Webster's edition over another will shape the Trump administration's forthcoming regulation. But environmental law experts say there is no use arguing over whether the late justice should have used *Webster's Third*.

For one, Scalia's *Rapanos* opinion is already part of the record and cannot be revoked.

More importantly, they say, there are more convincing legal arguments to be made against a potential Trump administration rule.

Chief among those is the fact that the administration is breaking precedent by relying on Scalia's opinion in *Rapanos*. Justice Anthony Kennedy's stand-alone opinion in that case has long been considered the ruling one by both circuit courts and the George W. Bush and Obama administrations.

Kennedy wrote that wetlands and small waterways fall under federal jurisdiction if they have a "significant nexus" to an actual navigable waterway, meaning there must be a surface, chemical or biological connection.

Environmental groups challenging a Trump regulation are far more likely to seize upon the Trump administration's break from precedent than Scalia's dictionary choice, said Larry Liebesman, a senior adviser with Dawson & Associates, a Washington lobby shop and consulting firm that specializes in water resources.

"No court has said that the holding of the court is Scalia's opinion and Scalia alone," he said.

Harvard Law School professor Richard Lazarus agrees, saying arguing about Webster's dictionaries "is probably not a viable argument" as long as Kennedy remains on the bench.

But dictionary definitions of "waters" could once again become significant if Kennedy leaves the court during the Trump administration, Lazarus said.

The Trump administration would likely replace the court's usual swing vote with a student of Scalia's "textualism."

"The question then would be if they admire Scalia's use of dictionaries, do they use the same one he did?" Lazarus said.

It's not yet clear whether Justice Neil Gorsuch, who replaced Scalia last month, also favors *Webster's Second*.

But John Calhoun, an attorney at Choate Hall & Stewart who has written about Scalia's dictionary use for the *Yale Law Journal*, notes there is still hope for the newer volume: "Samuel Alito often uses *Webster's Third*."

"He's often considered Scalia's mini-me, but in this one instance he is not," Calhoun said.

And Sokolowski, at Merriam-Webster, notes there is just one more twist to the question of which Webster's dictionary best defines congressional intent circa 1972: The dictionary divide is often a generational one.

So, while *Webster's Third* may have been the most recent volume when Congress passed the Clean Water Act, it's possible that lawmakers would have favored *Webster's Second*.

"Congress is full of older men, so it would hardly be surprising," he said.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Goodin, John
Sent: Mon 5/15/2017 9:35:55 PM
Subject: Re: New WOTUS website is live

Great work by you and the team! Very impressed with Brittany's handiwork and demo this morning!

Thanks

John

On May 15, 2017, at 5:06 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Hi Everyone,

I wanted to announce that EPA's new waters of the US website is live. Please check it out at <https://www.epa.gov/wotus-rule>. Many thanks to Brittany Bennett for developing the new site and thanks to all who provided comments quickly. Attached is the press release announcing the new site.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

<2017-05-15 Final WOTUS Website Release.docx>

From: Morgan, James
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

I vote to push it earlier rather than later.

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW; Telecom 1-866-299-3188, access 202-566-1290#
Importance: Normal
Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 5/16/2017 5:00:00 PM
End Date/Time: Tue 5/16/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 16, 2017 1:00 PM-2:00 PM.

Recipients

Hurd, Kathy

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Bennett, Brittany
Sent: Fri 5/12/2017 8:47:34 PM
Subject: RE: List of Pages to Publish

Deliberative Process / Ex. 5

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Kwok, Rose
Sent: Friday, May 12, 2017 4:47 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: List of Pages to Publish

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Eisenberg, Mindy

Sent: Friday, May 12, 2017 4:44:28 PM
To: Bennett, Brittany; Kwok, Rose; Christensen, Damaris
Cc: Downing, Donna
Subject: RE: List of Pages to Publish

Thanks Brittany!

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Bennett, Brittany

Sent: Friday, May 12, 2017 4:39 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>

Subject: List of Pages to Publish

Deliberative Process / Ex. 5

-B

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Deliberative Process / Ex. 5

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Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Fri 5/12/2017 8:46:46 PM
Subject: Re: List of Pages to Publish

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Eisenberg, Mindy
Sent: Friday, May 12, 2017 4:44:28 PM
To: Bennett, Brittany; Kwok, Rose; Christensen, Damaris
Cc: Downing, Donna
Subject: RE: List of Pages to Publish

Thanks Brittany!

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Bennett, Brittany

Sent: Friday, May 12, 2017 4:39 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>

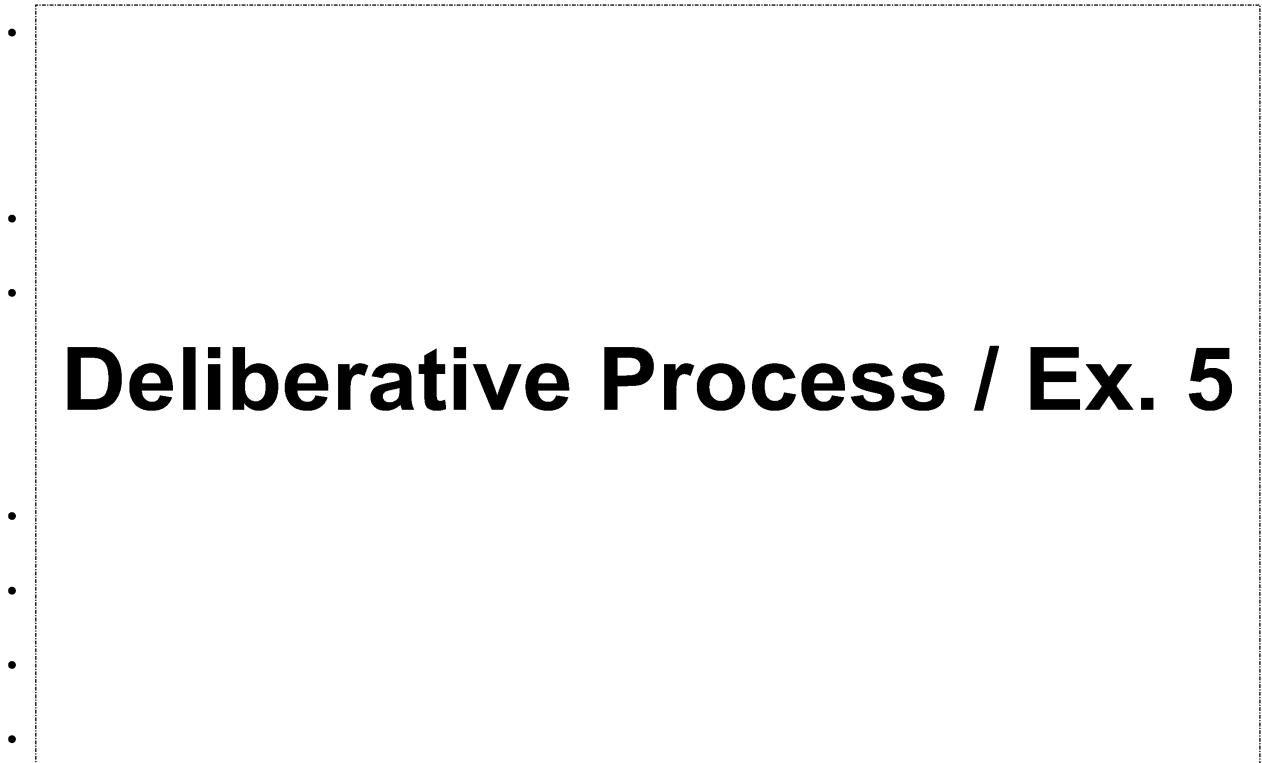
Subject: List of Pages to Publish

For your records, a list of the pages that will be published on Monday.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-B



Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Alexander, Laurie
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Alexander, Laurie
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Declined: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

Thanks Rose! Donna, can you add me to the distribution list?

I have to miss the May 18 meeting but will be there (virtually or in person) for other calls.

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Kwok, Rose
Sent: Thur 5/11/2017 6:48:25 PM
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

It would be for Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

From: Evalenko, Sandy
Sent: Thursday, May 11, 2017 2:44 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Rose is that for Deliberative Process / Ex. 5

S

From: Nelson, Tomeka
Sent: Thursday, May 11, 2017 1:55 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;
Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Sorry Rose, I was not aware of that decision. I will have to, defer to Sandy for an answer.

Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Kwok, Rose
Sent: Thursday, May 11, 2017 1:51 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Please recall that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Nelson, Tomeka
Sent: Thursday, May 11, 2017 1:46 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

FYI

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy
Sent: Thursday, May 11, 2017 1:13 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Cc: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Please let Rose Kwok and Donna Downing know that Kara has been added to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sandy

From: Flaharty, Stephanie

Sent: Tuesday, May 09, 2017 6:55 AM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Sandy,

We would like to participate on **OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."** Please add Kara Goodwin to the workgroup. Are there any background materials for new WG members?

Thanks,

Steph

To: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Evalenko, Sandy
Sent: Thur 5/11/2017 6:43:49 PM
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Rose is that for **Deliberative Process / Ex. 5**

S

From: Nelson, Tomeka
Sent: Thursday, May 11, 2017 1:55 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Sorry Rose, **Deliberative Process / Ex. 5**

Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Kwok, Rose
Sent: Thursday, May 11, 2017 1:51 PM
To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Action please: Tiering - May 2017 Tiering List due May 12

Please recall that we are

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Nelson, Tomeka

Sent: Thursday, May 11, 2017 1:46 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

FYI

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy

Sent: Thursday, May 11, 2017 1:13 PM

To: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Cc: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>

Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Please let Rose Kwok and Donna Downing know that Kara has been added to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sandy

From: Flaharty, Stephanie
Sent: Tuesday, May 09, 2017 6:55 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: FW: Action please: Tiering - May 2017 Tiering List due May 12

Sandy,

We would like to participate on **OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."** Please add Kara Goodwin to the workgroup. Are there any background materials for new WG members?

Thanks,

Steph

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Alexander, Laurie

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 18, 2017 1:00 PM-2:00 PM.

Recipients

Alexander, Laurie

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Kwok, Rose has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 8 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Alexander, Laurie

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Christensen, Damaris
Location: 3106-C WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: FW: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/10/2017 3:00:00 PM
End Date/Time: Wed 5/10/2017 4:00:00 PM

Hi Donna. Carol did not get the room change reminder for the meeting today, and it doesn't look like she's on the list below. I'm guessing what happened is that I forwarded the invite to Carol and thus she's not on the update list to get agendas, etc.

Can you please invite Carol to this recurring meeting directly when you are **Personal Matters / Ex. 6**
Personal Matters / Ex. 6

Also, I think as the keeper of our schedule (at least in conjunction with Latosha) it's important for Carol to get the Wednesday agendas since sometimes there are meetings listed we don't know about. Can you add her to your emails as/when you circulate? I'm copying Rose too since she will probably be developing agendas. **Personal Matters / Ex. 6** That won't force John, Mindy, or other managers to copy Carol, but we can keep trying to corral them. Carol, you may also be able to access the Wednesday agendas from my calendar; let me know if you need access.

Many thanks.

Damaris

-----Original Appointment-----

From: Downing, Donna
Sent: Friday, April 07, 2017 12:36 PM
To: Downing, Donna; David.F.Dale@usace.army.mil; Keating, Jim; Frazer, Brian; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Ludwig-Monty, Sarah; Neugeboren, Steven; Hudiburgh, Gary; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US); Wendelowski, Karyn; Flannery-Keith, Erin; Swackhammer, J-Troy; Principe, Vanessa; Clark, Becki; Jennings, Kim
Cc: Peck, Gregory; Wesson, Dolores

Subject: Responding to CWR-related 10am meeting requests

When: Wednesday, May 10, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 3106-C WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation

NEW ROOM -- ROOM WILL BE 3233 3106-C WJCE (~~same room as the 10am leadership meeting~~), unless I've sent a note otherwise for those weeks it's not available.

-

Telecom info is: Nonresponsive Conference Code/ Ex. 6

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

From: Microsoft Outlook
Location: 3106-C WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/10/2017 3:00:00 PM
End Date/Time: Wed 5/10/2017 4:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, May 10, 2017 11:00 AM-12:00 PM.

Recipients

Peterson, Carol

Downing, Donna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

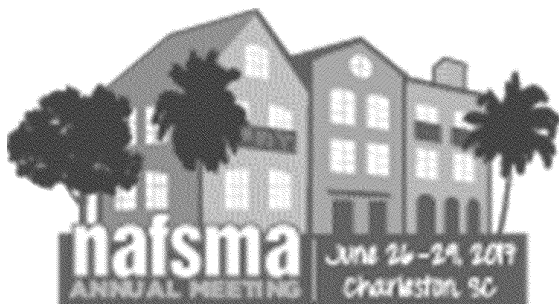
Sent by Microsoft Exchange Server

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Susan Gilson
Sent: Wed 5/10/2017 8:09:19 PM
Subject: NAFSMA Southern CA Counties Meeting Request

Mike and Donna – NAFSMA’s group of Southern California Counties are coming in to the nation’s capital and would very much like the opportunity to meet with you. Dusty Williams, former General Manager of the Riverside County Flood Control and Water Conservation District will be joining the group along with myself. We are hoping that you will have some time to meet with the group anytime on Tuesday, May 23 or the morning of Wednesday, May 24. We could also meet you for lunch if that would work better for you.

In particular they would like to discuss the streamlining of federal permits for operations and maintenance of public safety projects and review and replacement of the 2015 WOTUS regulations.

Please let me know if you are able to meet with us on May 23 or May 24th. We very much appreciate your consideration. – Susan



Susan Gilson

Executive Director

NAFSMA

PO Box 56764

Washington, DC 20040

202-289-8625

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]
Cc: CWAwotus[CWAwotus@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Anthony, Susan
Sent: Wed 5/10/2017 7:28:47 PM
Subject: RE: WOTUS Executive Order and Wisconsin State Bar Environmental Law Seminar (September 13, 2017)

Thanks.

Susan Anthony

Director of Legal Services

Milwaukee Metropolitan Sewerage District

414-225-2106



How can you help protect Lake Michigan?

Find out at: www.mmsd.com

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]
Sent: Wednesday, May 10, 2017 1:53 PM
To: Anthony, Susan <SAnthony@mmsd.com>; Hanson, Andrew <Hanson.Andrew@epa.gov>
Cc: CWAwotus <CWAwotus@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: WOTUS Executive Order and Wisconsin State Bar Environmental Law Seminar (September 13, 2017)

Hi, Susan.

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Sent: Wednesday, May 10, 2017 2:21 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>
Cc: CWAwotus <CWAwotus@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WOTUS Executive Order and Wisconsin State Bar Environmental Law Seminar (September 13, 2017)

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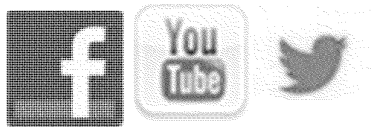
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Cc: McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Kwok, Rose
Sent: Wed 5/10/2017 6:26:58 PM
Subject: RE: WOTUS Executive Order and Wisconsin State Bar Environmental Law Seminar (September 13, 2017)

Yeah, we **Deliberative Process / Ex. 5** ...I think **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 ..

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Sent: Wednesday, May 10, 2017 2:22 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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Deliberative Process / Ex. 5

Damaris

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From: Christensen, Damaris
Sent: Wed 5/10/2017 6:22:02 PM
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Deliberative Process / Ex. 5

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Cc: Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Chemerys, Ruth
Sent: Wed 5/10/2017 12:54:41 PM
Subject: RE: COR certified? looking for some work after the reorg?

Hi Damaris-

Yes, I am COR certified and would be willing to serve as alternate COR, as well as to help with response to comments. I'll look at the link below and then you and I can talk further. I unfortunately don't have a lot of spare time now, as things seemed to have gotten busy trying to wrap some things up before re-org. But let's set up time to talk.

Ruth

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 11:33 PM
To: Chemerys, Ruth <Chemerys.Ruth@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: COR certified? looking for some work after the reorg?

Hi, Ruth,

Donna and Mike tell me you are COR certified and have previous rulemaking experience. After the reorg, we will need a secondary COR for our WOTUS response to comments contract. I know for sure that the option year rolls over July 31, and we will need a new PWS and possibly additional funding during a time I expect to be fairly busy and when the response to comments work is likely to be in full swing. Laura Bachle, who is the alternate COR right now, actually took the role of writing the PWS and getting all the paperwork through. I'm super grateful for that, but it means I am not as familiar with the nitty gritty of the project as I may need to become.

In addition, if you are interested in also helping or spearheading the project management for the overall response to comments effort here at EPA and the Corps, let me know, and we can set up

a time to talk. The process we've discussed with the Army and the Corps of Engineers is on the Sharepoint site here:

Nonresponsive Internal URL/ Ex. 6

Look forward to chatting more,

Damaris

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Cc: Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Christensen, Damaris
Sent: Wed 5/10/2017 3:32:44 AM
Subject: COR certified? looking for some work after the reorg?

Hi, Ruth,

Donna and Mike tell me you are COR certified and have previous rulemaking experience. After the reorg, we will need a secondary COR for our WOTUS response to comments contract. I know for sure that the option year rolls over July 31, and we will need a new PWS and possibly additional funding during a time I expect to be fairly busy and when the response to comments work is likely to be in full swing. Laura Bachle, who is the alternate COR right now, actually took the role of writing the PWS and getting all the paperwork through. I'm super grateful for that, but it means I am not as familiar with the nitty gritty of the project as I may need to become.

In addition, if you are interested in also helping or spearheading the project management for the overall response to comments effort here at EPA and the Corps, let me know, and we can set up a time to talk. The process we've discussed with the Army and the Corps of Engineers is on the Sharepoint site here:

Nonresponsive Internal URL/ Ex. 6

Look forward to chatting more,

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 5/9/2017 6:59:06 PM
Subject: RE: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Donna, did you get my email that your group meeting after WOTUS has been moved to 3106C. Not 3233.

From: Downing, Donna
Sent: Tuesday, May 9, 2017 2:43 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Hi Crystal and Ann—

Attached please find a copy of the agenda for Wednesday's 10am WOTUS leadership meeting. The agenda reflects input from Wetlands Division management.

If you have any questions or suggestions, please give a call to either Mindy (566-1290) or me (566-1367).

Ann, if the agenda looks OK could you coordinate with Crystal to have it added to the meeting invitation? Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]; Cook-Shyovitz, Becky[Cook-Shyovitz.Becky@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Kwok, Rose
Sent: Tue 5/9/2017 6:54:01 PM
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:53 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:50 PM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>

Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Christensen, Damaris

Sent: Tuesday, May 09, 2017 2:37 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>

Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I was in the process of writing an email very similar to Rose's.

Deliberative Process / Ex. 5

Damaris

From: Kwok, Rose

Sent: Tuesday, May 09, 2017 2:35 PM

To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Hi Antonio,

1. It's my understanding that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

2.

Deliberative Process / Ex. 5

Mindy or Damaris, do you know?

From: Bravo, Antonio

Sent: Tuesday, May 09, 2017 2:26 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>

Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. Were all letters sent today, or on May 8, the date on the Branstad letter?

From: Fuld, John

Sent: Tuesday, May 09, 2017 2:16 PM

To: Bravo, Antonio <Bravo.Antonio@epa.gov>

Cc: Campbell, Ann <Campbell.Ann@epa.gov>

Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm



Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

Two questions on the WOTUS state input news release.

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

2. Were all letters sent today, or on May 8, the date on the Branstad letter?

For Context – Internal Only {to be included in addendum}

BACKGROUNDER: *(background on the issue. What is it? The objective? Is it bipartisan? Is it publicly avail? Are we making news with discussing this for the first time? Have we discussed it publicly before? Where? Listserv? Meeting? Webinar? Press Release? Speech?)*

INFORMATION PUBLICLY AVAILABLE: *(LIST SOURCE WITH EACH ANSWER)*

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Personal Phone / Ex. 6

Fuld.john@epa.gov

To: Bravo, Antonio[Bravo.Antonio@epa.gov]; Cook-Shyovitz, Becky[Cook-Shyovitz.Becky@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/9/2017 6:53:02 PM
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:50 PM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

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Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

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Deliberative Process / Ex. 5

Damaris

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:35 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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2. Were all letters sent today, or on May 8, the date on the Branstad letter?

From: Fuld, John

Sent: Tuesday, May 09, 2017 2:16 PM

To: Bravo, Antonio <Bravo.Antonio@epa.gov>

Cc: Campbell, Ann <Campbell.Ann@epa.gov>

Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm



Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

Two questions on the WOTUS state input news release.

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?

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For Context – Internal Only {to be included in addendum}

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INFORMATION PUBLICLY AVAILABLE: *(LIST SOURCE WITH EACH ANSWER)*

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

 **Personal Phone / Ex. 6**

Fuld.john@epa.gov

To: Cook-Shyovitz, Becky[Cook-Shyovitz.Becky@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Fuld, John[Fuld.John@epa.gov]
From: Bravo, Antonio
Sent: Tue 5/9/2017 6:50:18 PM
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

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Cc: Downing, Donna <Downing.Donna@epa.gov>
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Damaris

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Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Hi Antonio,

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Sent: Tuesday, May 09, 2017 2:26 PM
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To: Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm



Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

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INFORMATION PUBLICLY AVAILABLE: *(LIST SOURCE WITH EACH ANSWER)*

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Personal Phone / Ex. 6

Fuld.john@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/9/2017 6:45:32 PM
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, May 09, 2017 2:44 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>
Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 5/9/2017 4:15:15 PM
Subject: FW: WOTUS-2 interagency staff meeting
interagency agenda WOTUS 02 May 2017.docx

From: Eisenberg, Mindy

Sent: Tuesday, May 02, 2017 8:49 AM

To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US <Jennifer.A.Moyer@usace.army.mil>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Peterson, Carol <Peterson.Carol@epa.gov>; David.F.Dale@usace.army.mil; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Cooper, David R SES USARMY CEHQ (US) <David.R.Cooper@usace.army.mil>; Pittman, Emerson W CTR USARMY HQDA OCPA (US) <emerson.w.pittman.ctr@mail.mil>
Subject: RE: WOTUS-2 interagency staff meeting

Agenda for today's 1:00 meeting.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 11:16 AM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); Wilson, John Maxwell (Max) CIV USARMY CEHQ (US); Cindy Barger; Peterson, Carol; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores

Cc: Peck, Gregory; Cooper, David R SES USARMY CEHQ (US); Pittman, Emerson W CTR USARMY HQDA OCPA (US)

Subject: WOTUS-2 interagency staff meeting

When: Tuesday, May 02, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call

Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

To: Downing, Donna[Downing.Donna@epa.gov]
From: Jennings, Kim
Sent: Tue 5/9/2017 4:12:42 PM
Subject: Automatic reply: Responding to CWR-related 10am meeting requests

I am out of the office until Monday, May 15, 2017. I will respond to your email when I return to the office.

Thanks,
Kim

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Feinmark, Phyllis
Sent: Mon 5/8/2017 6:19:03 PM
Subject: workgroup

Hi guys – I heard you had a waters of the US rule workgroup call last Friday. I used to be on that list, but (apparently) I am not any longer. Can you please add me back on? Thanks!

Phyllis Feinmark

Chief, Water and General Law Branch

Office of Regional Counsel

US EPA Region 2

290 Broadway, NY NY 10007

(212) 637-3232

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]
From: Eisenberg, Mindy
Sent: Sun 5/7/2017 8:07:30 PM
Subject: FW: WOTUS OCIR Involvement

FYI. Don't think I forwarded this to you all.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Greenwalt, Sarah
Sent: Tuesday, May 02, 2017 10:47 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: WOTUS OCIR Involvement

Mindy and John,

I have shared the proposed comms/outreach process overview with OCIR and Troy Lyons would like you to add Tate Bennett and remove Layne. She will be handling intergovernmental relations from this point forward.

Thanks!

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722 | **Personal Phone / Ex. 6**

Greenwalt.Sarah@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Moore, Kristie
Sent: Fri 5/5/2017 7:00:32 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Great!

Thank you all. I'll send this to Sandra for her review.

Have a great weekend.

Kristie M. Moore

Office of Wetlands Oceans and Watersheds

U.S. Environmental Protection Agency

EPA West

1200 Pennsylvania Ave., NW

MC-4501 T

Washington, DC, 20460

office: (202) 566-1616

fax: (202) 566-1544

From: Downing, Donna
Sent: Friday, May 05, 2017 2:56 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Moore, Kristie <Moore.Kristie@epa.gov>
Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Hi Kristie:

Attached is the revised 1-pager on WOTUS. Thanks for your suggestions about shortening, and the attached also reflects input from OGC. It's now one page!

Donna

From: Eisenberg, Mindy
Sent: Friday, May 05, 2017 2:43 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Fwd: For review -- Requested FY18 budget fact sheet on WOTUS

Sent from my iPhone

Begin forwarded message:

From: "Moore, Kristie" <Moore.Kristie@epa.gov>
Date: May 5, 2017 at 2:23:29 PM EDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Cc: "Weinstock, Larry" <Weinstock.Larry@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Mindy,

Deliberative Process / Ex. 5

Here are some suggested edits. I didn't make them in one drive because I didn't want to

mess with the editing currently going on.

I'm looping-in Sandra because I'll be leaving in about an hour. I know she is interested in reviewing this factsheet and it looks like you might be in a meeting until 4:30.

When you have a final draft, can you please send a copy to Sandra? Otherwise, I'll follow-up with you on Monday to close the loop.

Thank you,

Kristie

Kristie M. Moore

Office of Wetlands Oceans and Watersheds

U.S. Environmental Protection Agency

EPA West

1200 Pennsylvania Ave., NW

MC-4501 T

Washington, DC, 20460

office: (202) 566-1616

fax: (202) 566-1544

From: Eisenberg, Mindy

Sent: Friday, May 05, 2017 1:50 PM

To: Moore, Kristie <Moore.Kristie@epa.gov>

Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>

Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

I haven't seen edits from OGC, but here is a draft. Is it too long?

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Weinstock, Larry

Sent: Friday, May 05, 2017 9:27 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

Do you want me to forward this to Kristi or wait?

From: Downing, Donna

Sent: Thursday, May 04, 2017 7:34 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>

Subject: For review -- Requested FY18 budget fact sheet on WOTUS

Hi Mindy and Larry:

Attached please find a draft FY18 budget fact sheet on the ongoing WOTUS rulemaking effort.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

With this email, I am cc'ing OGC's Carrie Wehling for her input. Carrie, could you please click "reply to all" with any suggested edits or other input?

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov];
Stacey.M.Jensen@usace.army.mil[Stacey.M.Jensen@usace.army.mil]; McCarthy,
Julia[McCarthy.Julia@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]
From: Auerbach, Daniel
Sent: Fri 5/5/2017 6:31:23 PM
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

Deliberative Process / Ex. 5

have a good weekend,

Dan

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Thursday, May 4, 2017 1:24:24 PM

To: Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; Morgan, James

Cc: Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Wesson, Dolores; Gude, Karen; Moffatt, Brett

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

Deliberative Process / Ex. 5

The “read only” version can be found here:

Nonresponsive Internal URL/ Ex. 6

The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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downing.donna@epa.gov

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1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Fri 5/5/2017 6:21:01 PM
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS
Fact Sheet for FY18 Budget -- WOTUS v1.cw.docx



Fact Sheet for FY18 Budget -- WOTUS v1.docx

That's funny. It came in as a SharePoint document. In any case, my edits are in the second attachment. ☺

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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Thanks!

Donna

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Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Wehling, Carrie
Sent: Fri 5/5/2017 6:11:29 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

I just saved it into the sharepoint document. Did that not work?

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Friday, May 05, 2017 2:08 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Thanks, Carrie. Where did you upload your changes? I want to make sure to go to the right version. Thanks!

Donna

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Uploaded my fairly limited changes. Thanks.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna

Sent: Thursday, May 04, 2017 7:34 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry
<Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose
<Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>

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Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

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Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Wehling, Carrie
Sent: Fri 5/5/2017 6:05:22 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Uploaded my fairly limited changes. Thanks.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

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wehling.carrie@epa.gov

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Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: McCarthy, Julia
Sent: Fri 5/5/2017 4:08:48 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Donna,

Sorry to have missed the call yesterday. I was travelling. Have put my comments into the working document. Please give a holler when you have a few minutes to fill me in on anything I may have missed.

Cheers,
Julia

From: Downing, Donna
Sent: Thursday, May 4, 2017 11:24 AM
To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>
Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

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Deliberative Process / Ex. 5

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Nonresponsive Internal URL/ Ex. 6

The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

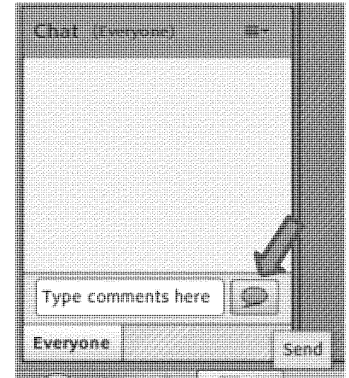
Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

Region 4 RTOC – June 7, 2017

Webinar Logistics

- * Call in **Nonresponsive Conference Code/ Ex. 6**
- * You can type questions or comments into the “chat” box, and click the comment bubble to send. Report any technical issues via chat. You can also verbally ask any questions or state any comments during the Questions and Discussion portion of the presentation.

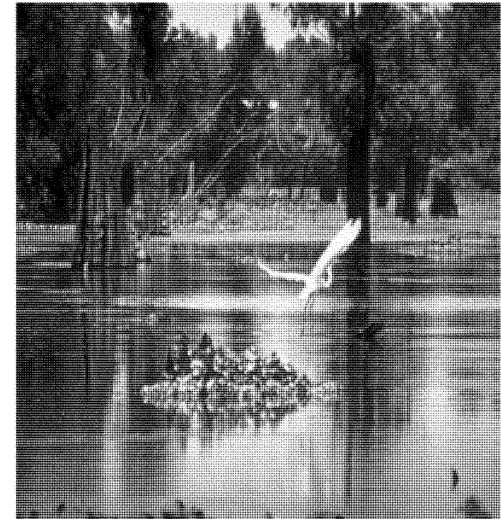


Why Are We Here?

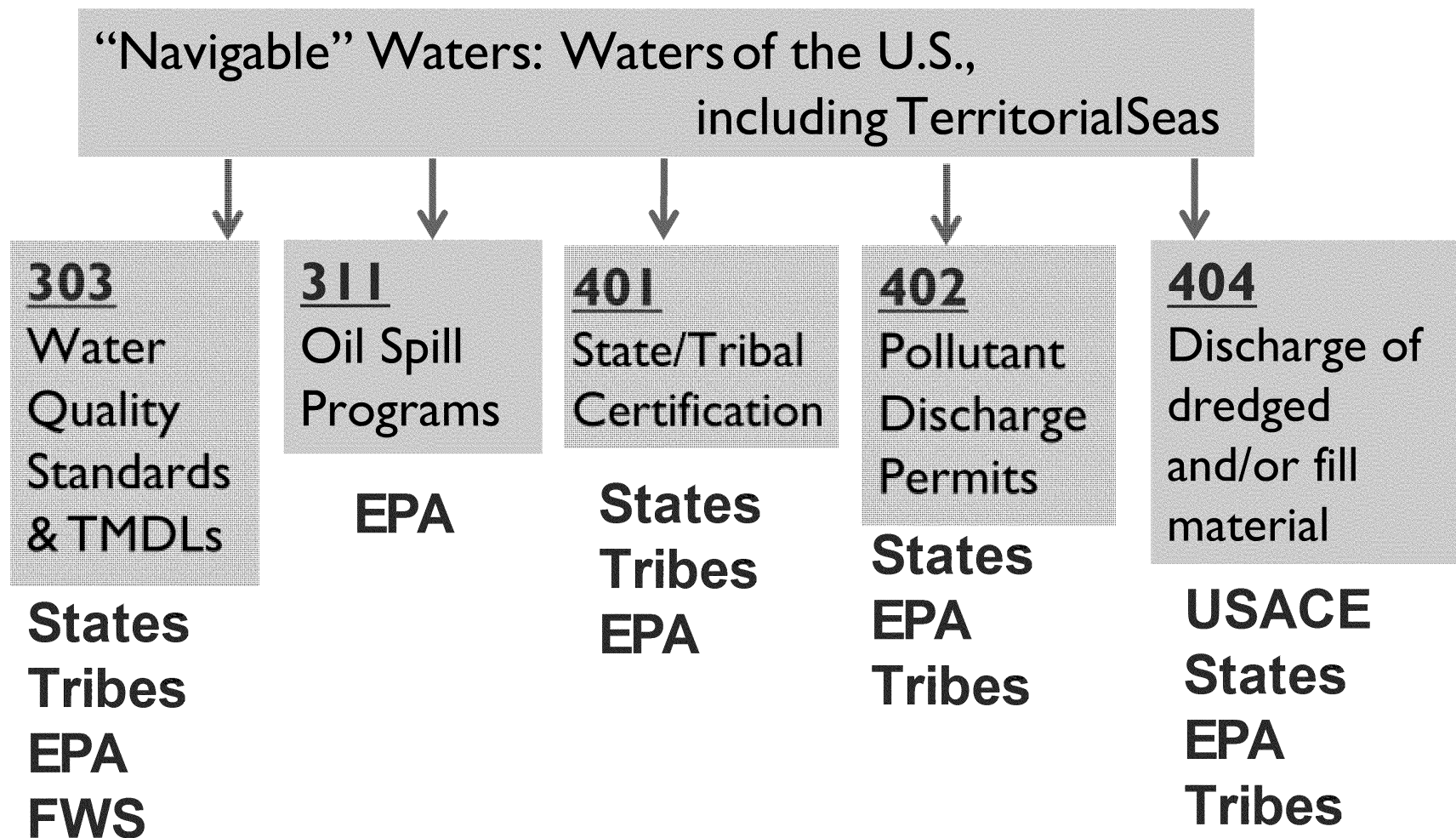
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
- * The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.
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Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
 2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
- * The agencies are aware that the scope of CWA jurisdiction is of intense interest to many Tribes and stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.
- * In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
- * To provide greater certainty, the agencies will move to reinstate the pre-existing regulations and guidance and to withdraw the 2015 Clean Water Rule.
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- * The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

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The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

- * Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes **relatively permanent waters** and wetlands with a **continuous surface connection** to relatively permanent waters.
- * The agencies are consulting with Tribes and with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current
practice:
seasonal
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3 months
(varies
regionally)

Perennial plus
streams with
another measure
of flow

Use
appropriate,
implementable
metrics, e.g.,
frequency of
flow,
intersecting
water table

Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional
feature

Current practice
considers
directly abutting
wetlands and
those with a
continuous
surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
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Wetland must
directly touch
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Only wetlands
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Other

Thoughts?

Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
- * How do you think a reduction in Clean Water Act jurisdiction might affect your Tribalwater programs, such as 401 water quality certification or water quality standards?
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- * If the definition changes, what would be the best way to “get the word out” and provide training and information to Tribes?

Next Steps

- * **Regional Tribal Operations Council Conference Calls**
 - * June 22 – Region 8
 - * May schedule additional sessions at other RTOC calls/meetings
- * **June 14** – National Congress of the American Indians Mid Year Conference
- * **June 20** – Tribal consultation period concludes
 - * Comments can be submitted to CWAwotus@epa.gov and copied to Gude.Karen@epa.gov
- * **August 16** – Tribal Lands & Environment Forum

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Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

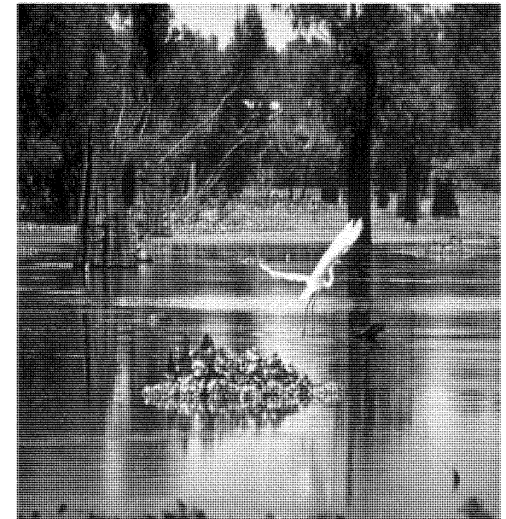
Region 6 RTOC – June 6, 2017

Why Are We Here?

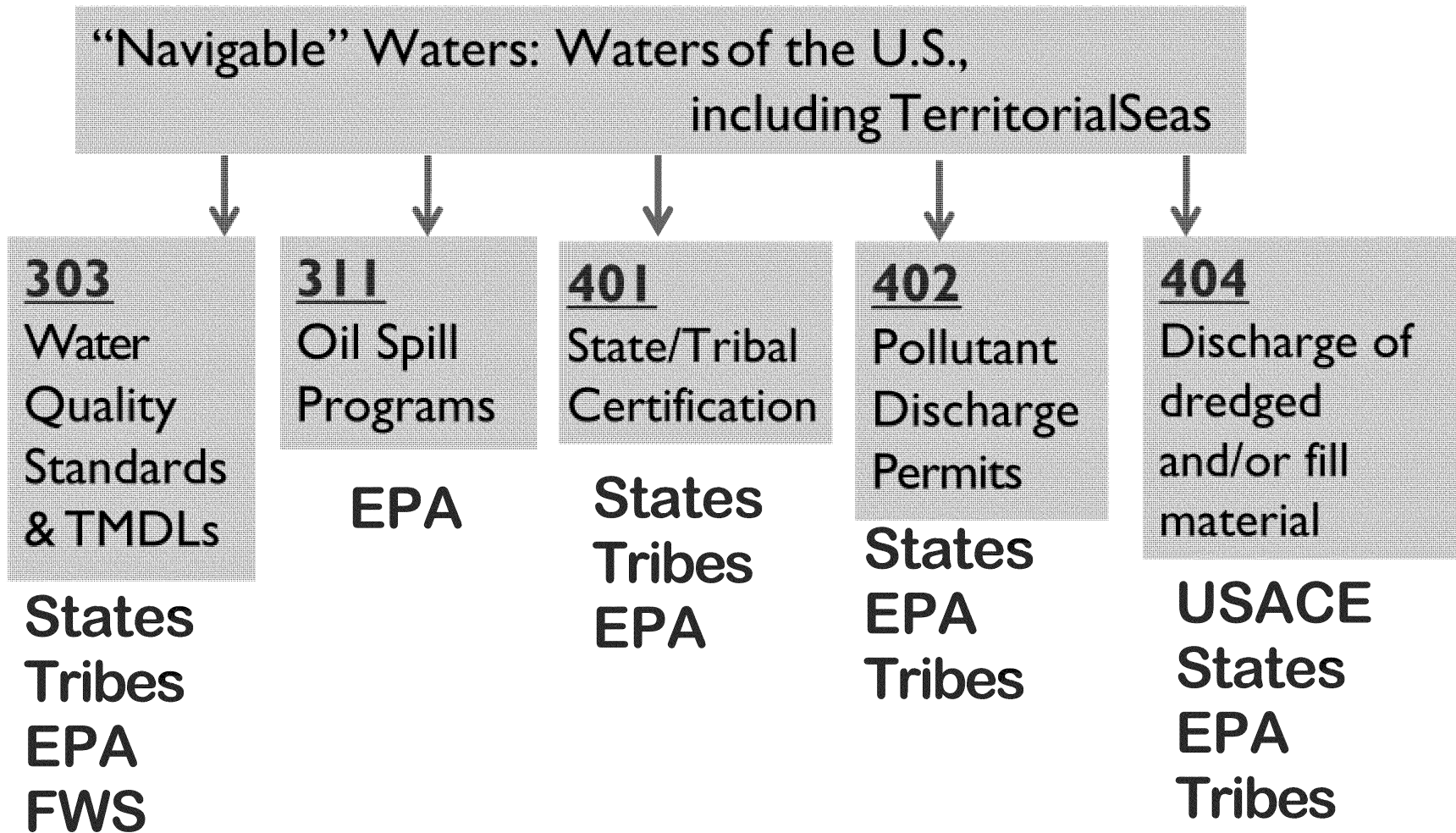
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
- * The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.
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Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 - 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
 - 2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
- * The agencies are aware that the scope of CWA jurisdiction is of intense interest to many Tribes and stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.
- * In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
- * To provide greater certainty, the agencies will move to reinstate the pre-existing regulations and guidance and to withdraw the 2015 Clean Water Rule.
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Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

- * Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes **relatively permanent waters** and wetlands with a **continuous surface connection** to relatively permanent waters.
- * The agencies are consulting with Tribes and with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
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Current
practice:
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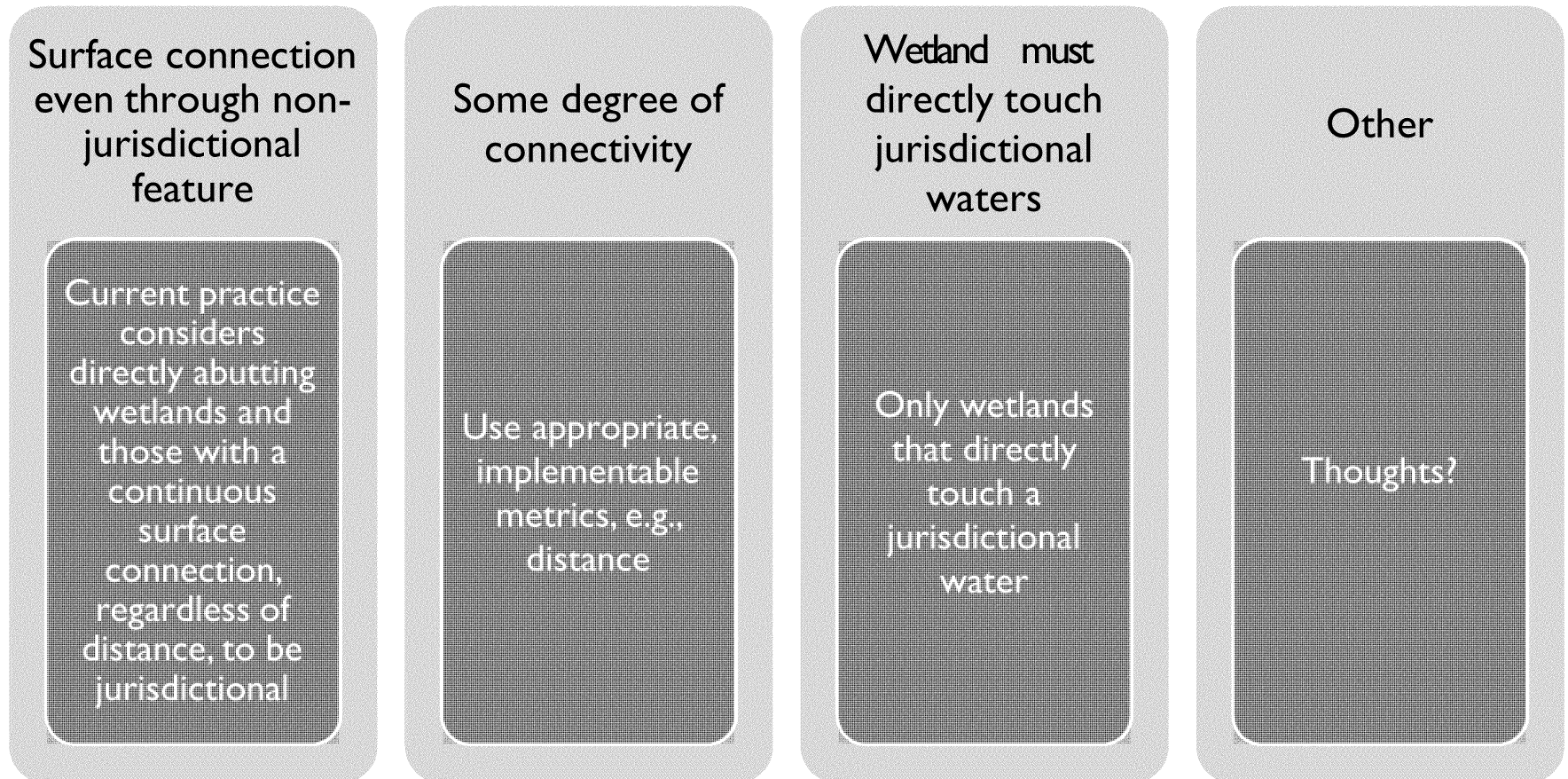
Perennial
streams only

Streams
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Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”



Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
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The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

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The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

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From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

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Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

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3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
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Next Steps

Do you have any additional information that the EPA should be aware of?

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Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

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Federalism Contact:

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**AGENDA
WOTUS MEETING**

Wednesday, May 31, 2017

10:00-10:45am

WJC EAST 3233

Telecom: Nonresponsive Conference Code/ Ex. 6

1. Introductions (3 minutes)
2. Rulemaking Updates (35 minutes)

Deliberative Process / Ex. 5

3. Next steps (2 min)

Reminder: Next Week's Meeting (May 24, 2017) Is Cancelled

Upcoming Stakeholder discussions

a. E.O. 12866 Meetings

1. Thurs. 6/1 - Clean Water Action
2. Mon. 6/5 - PolicyLink 1-1:30
3. Mon. 6/5 - Don Parrish AFBF 2-2:30
4. Thurs. 6/8 - NMA at OMB 11-11:30

b. Federalism

1. Wed. 5/31 NASDA 4-5
2. Fri. 6/2 WSWC 2-3
3. Tues. 6/6 ASWM 2-3
4. Wed. 6/7 LGAC
5. Looking ahead -
 - Wed. 6/7 NAFSMA 2-3
 - Thurs. 6/8 WGA 1-2
 - Fri. 6/9 ACWA 3-4

c. Tribal Consultations

1. Wed. 5/31 Tolowa Dee-ni' Nation 12-1
2. Tues. 6/6 R6 RTOC 11:30-12
3. Wed. 6/7 R4 RTOC 11-12 (tentative)

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting
Webinar with WSWC
June 8, 2017
1-2 pm Eastern

Adobe Connect Link:

Nonresponsive Internal URL/ Ex. 6

Call in Number:

Nonresponsive Conference Code/ Ex. 6

Conference ID

Nonresponsive Conference Code/ Ex. 6

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
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WSWC EPA Contact:

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only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

Contacts

Project Lead:

Donna Downing

- (202) 566–2428
- CWAwotus@epa.gov

Federalism Contact:

Andrew Hanson

- (202) 564-3664
- Hanson.Andrew@epa.gov

Office of Water Tribal Consultation Semi-Annual Agenda

[illegible]

Flight# UA6015 from IAD -> PIT (1 hour and 3 mi ns.)

20170613T211500Z

Version

2.0

METHOD

PUBLISH

Start Date/Time

20170613T211500Z

End Date/Time

20170613T221800Z

DTSTAMP

20170613T211500Z

Location

Summary

Flight# UA6015 from IAD -> PIT
(1 hour and 3 mi ns.)

Description

Trip Overview

~~~~~

Trip Name: Pittsbu rgh OLEM meeting

Start Date: June 13, 2017

End Date: June 14, 2017

Created: May 25, 2017, DONN A DOWNING (Modified: May 25, 2017)

Description: OLEM Presentation on WOTUS-2 in Pittsburgh

Trip Purpose: 4-SPEECH OR PRESENTATION

Agency Record Locator: MZK35Z

Passengers: Donna M Downing

Total Estimated Cost: \$ 611.40 USD

Important: Reservations must be approved and ticketed no later than: 06/11/2017 3:15 PM Eastern

The trip will be automatically cancelled if it is not approved before the deadline.

Agency Name: BCD\_EPA

**Reservations**

~~~~~

Tuesday, June 13, 2017

Flight Washington, DC (IAD) to Pittsburgh, PA (PIT)

~~~~~

United 6015



Operated by: MESA AIRLINES DBA UNITED EXPRESS

Departure: 05:15 PM

Seat: 12C (Confirmed)

Washington Dulles Intl (IAD)

Duration: 1 hour, 3 minutes

No stop

Arrival: 06:18 PM

Pittsburgh Intl Arpt (PIT)

Confirmation: Personal Matters / Ex. 6

Status: Confirmed

Air Frequent Flyer Number: Personal Matters / Ex. 6

Aircraft: Canadair 700

Distance: 182 miles

E-Ticket

Emissions: 96.5 lbs CO<sub>2</sub>

Cabin: Economy (E)

Wyndham Grand Pittsburgh

.....

600 Commonwealth Place

Pittsburgh, PA, 15222 US

FONE 412-391-4600

Checking In: Tue Jun 13 Days 1, Guests 1

Checking Out: Wed Jun 14 Confirmation: Personal Matters / Ex. 6

Not purchased through the reservation system

Daily Rate: \$ 129.00 USD

Total Rate: \$ 129.00 USD

Room Details

Room Description: SINGLE WITH BATH

Remarks RATE USD 129.00

USER SUPPLIED HOTEL

Directions to Hotel from: Pittsburgh Intl Arpt

(Distance: 16.6 miles, Time: 22m 44s)

- \* Depart toward Hangar Rd (0.3 miles/1m 46s)
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Wednesday, June 14, 2017

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.....

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Seat: 16B (Confirmed)  
Pittsburgh Intl Arpt (PIT)  
Duration: 1 hour, 4 minutes  
Nonstop

Arrival: 03:49 PM

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Air \nAirfare quoted amount: \$ 422.32 USD

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Total Estimated Cost: \$ 611.40 USD

TICKET NOT YET ISSUED. AIRFARE QUOTED IN ITINERARY IS NOT GUARANTEED UNTIL TICKETS ARE ISSUED.

Remarks

~~~~~

FOR 24/7 TRAVEL ASSISTANCE PLEASE CONTACT  
THE BCD TRAVEL TEAM AT 1-866-964-1346  
FOR OUTSIDE THE US CALL COLLECT 770-829-2609  
FOR THE HEARING IMPAIRED- PLEASE DIAL 711  
TO ACCESS RELAY SERVICE- PROVIDE PHONE  
NUMBER OF 1-866-964-1346 TO ACCESS TRAVEL

\*\*\*\*\*

DUE TO RECENT CHANGES IN THE FY15 GOVERNMENT CITY PAIR  
PROGRAM /CPP YOUR AIR RESERVATIONS ARE SUBJECT TO  
CANCELLATION BY THE AIRLINES IF NOT TICKETED AT LEAST  
48 HOURS PRIOR TO SCHEDULED DEPARTURE  
PLEASE ENSURE ALL NECESSARY APPROVALS ARE PROCESSED IN  
ACCORDANCE WITH YOUR AGENCY'S BUSINESS RULES BUT NO LATER THAN 3 BUSINESS DAYS PRIOR TO DEPARTURE TO ENSURE TICKETING.  
THIS 48 HOUR CANCELLATION RULE DOES NOT APPLY TO  
INTERNATIONAL RESERVATIONS UNLESS YOUR TRIP HAS DOMESTIC  
CONNECTIONS ON MORE THAN ONE AIRLINE OR THESE  
RESERVATIONS REQUIRE SEPARATE AIR TICKETS.

\*\*\*\*\*

**UID**

MZK35Z-2017-06-13T21:15:00.000Z-2017-06-13T22:18:00.000Z@concursolutions.com

**Priority**  
3

**Time Transparency**  
OPAQUE

**TRIGGER**  
-PT180M

**REPEAT**  
2

**DURATION**  
PT60M

**ACTION**  
DISPLAY

**Description**  
3 Hours to your flight IAD -> PIT

# Flight# UA6191 from PIT -> IAD (1 hour and 4 mi ns.)

**20170614T184500Z**

**Version**

2.0

**METHOD**

PUBLISH

**Start Date/Time**

20170614T184500Z

**End Date/Time**

20170614T194900Z

**DTSTAMP**

20170614T184500Z

**Location**

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Priority
3

Time Transparency
OPAQUE

TRIGGER
-PT180M

REPEAT
2

DURATION
PT60M

ACTION
DISPLAY

Description
3 Hours to your flight PIT -> IAD

Wyndam Grand Pittsburgh

600 Commonwealth Place,;Pittsburgh;PA;15222;US

FONE 412-391-4600 (Work Voice)

Version

2.1

Organization

Wyndam Grand Pittsburgh

Telephone Number (Work Voice)

FONE 412-391-4600

Address (Work)

P.O. Address:

Extended Address:

Street: 600 Commonwealth Place,

Locality: Pittsburgh

Region: PA

Postal Code: 15222

Country: US

Delivery Label (Work)

600 Commonwealth Place,;Pittsburgh;PA;15222;US

Comment

Checkin Time:

Checkout Time:

Last Revision

5/25/2017 3:01:58 PM

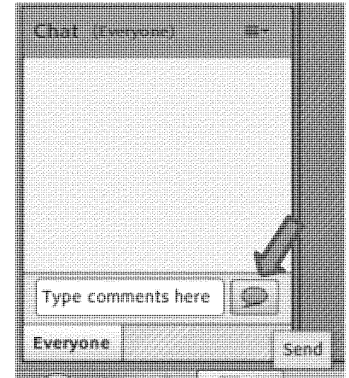
Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

Region 4 RTOC – June 7, 2017

Webinar Logistics

- * Call in: 1-866-299-3188; 404-562-8343#
- * You can type questions or comments into the “chat” box, and click the comment bubble to send. Report any technical issues via chat. You can also verbally ask any questions or state any comments during the Questions and Discussion portion of the presentation.

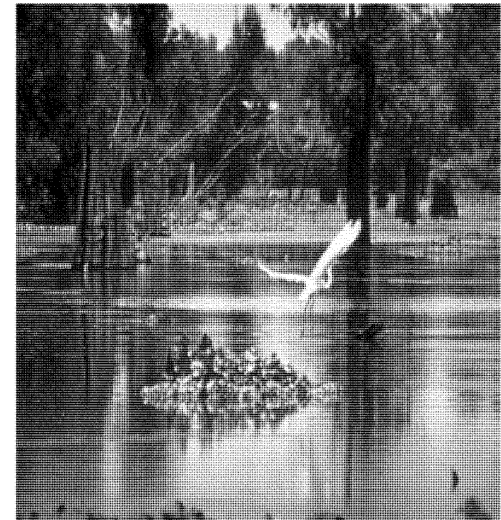


Why Are We Here?

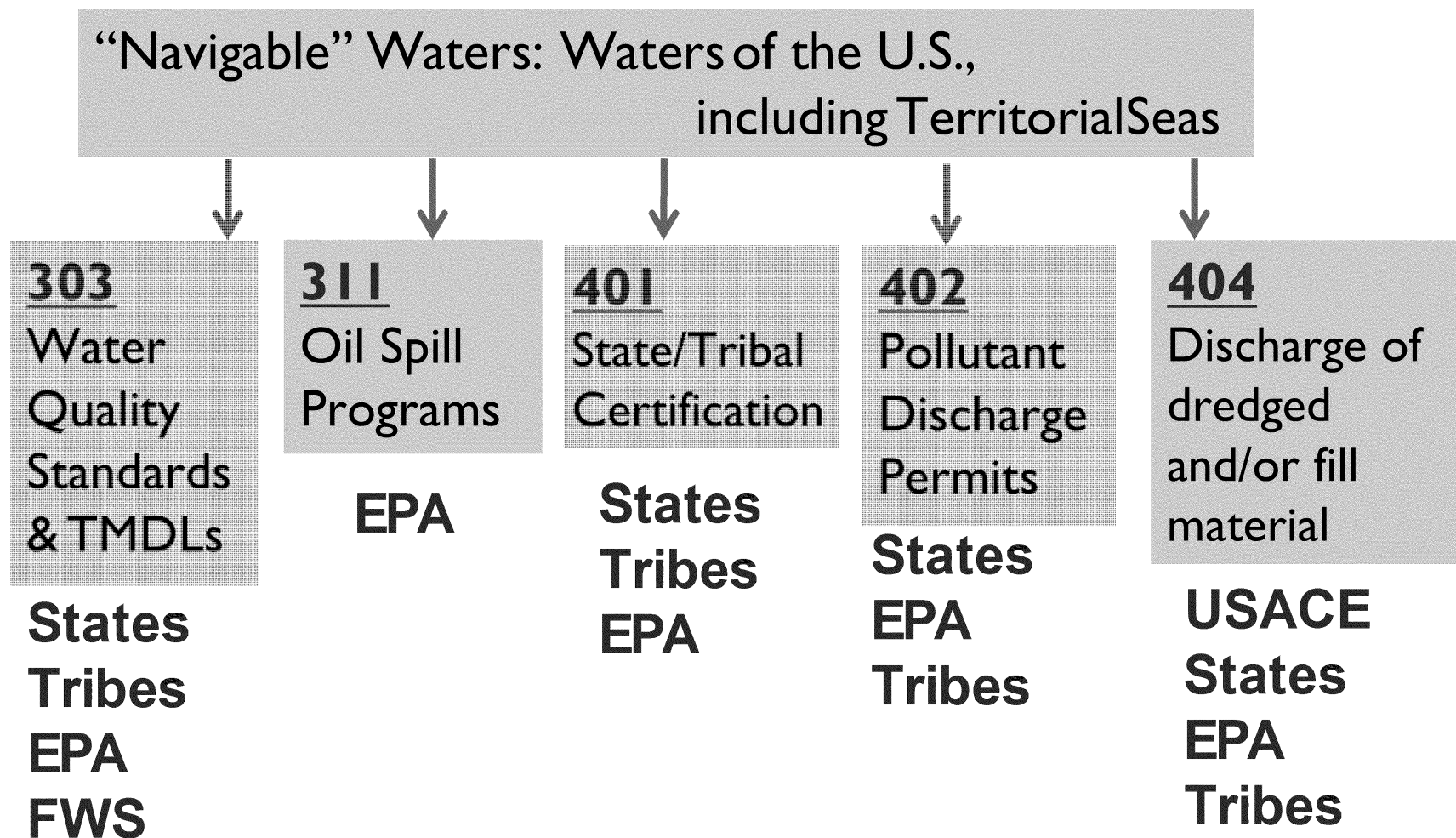
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
- * The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.
- * <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
 2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
- * The agencies are aware that the scope of CWA jurisdiction is of intense interest to many Tribes and stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.
- * In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
- * To provide greater certainty, the agencies will move to reinstate the pre-existing regulations and guidance and to withdraw the 2015 Clean Water Rule.
- * In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the 2015 Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.
- * The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

- * Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes **relatively permanent waters** and wetlands with a **continuous surface connection** to relatively permanent waters.
- * The agencies are consulting with Tribes and with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current
practice:
seasonal
flow = about
3 months
(varies
regionally)

Perennial plus
streams with
another measure
of flow

Use
appropriate,
implementable
metrics, e.g.,
frequency of
flow,
intersecting
water table

Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
- * How do you think a reduction in Clean Water Act jurisdiction might affect your Tribalwater programs, such as 401 water quality certification or water quality standards?
- * How might a change in definition and reduction in federal permitting affect other Tribalprograms and interests?
- * If the definition changes, what would be the best way to “get the word out” and provide training and information to Tribes?

Next Steps

- * **Regional Tribal Operations Council Conference Calls**
 - * June 22 – Region 8
 - * May schedule additional sessions at other RTOC calls/meetings
- * **June 14** – National Congress of the American Indians Mid Year Conference
- * **June 20** – Tribal consultation period concludes
 - * Comments can be submitted to CWAwotus@epa.gov and copied to Gude.Karen@epa.gov
- * **August 16** – Tribal Lands & Environment Forum

Contacts

Project Leads

- * Donna Downing (EPA)
 - * (202) 566-2428
 - * CWAwotus@epa.gov
- * Stacey Jensen (Army Corps of Engineers)
 - * (202) 761-5903
 - * USACE_CWA_Rule@usace.army.mil

Tribal Liaison Contacts

- * Karen Gude (EPA)
 - * (202) 564-0831
 - * Gude.karen@epa.gov
- * Chip Smith (Army)
 - * (703) 693-3655



For Additional Information

*** Please visit our new website at:**

*** <https://www.epa.gov/wotus-rule>**



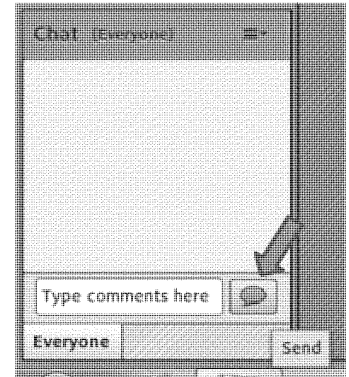
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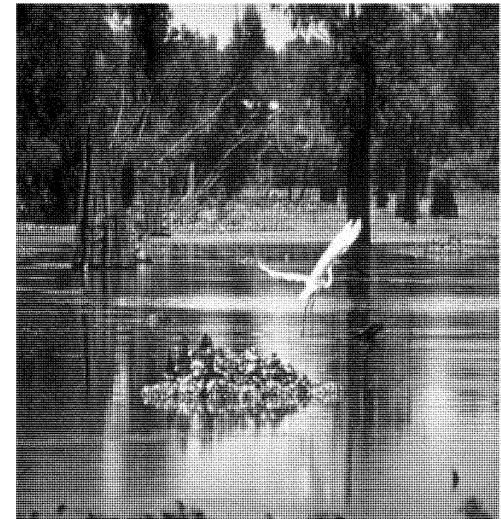
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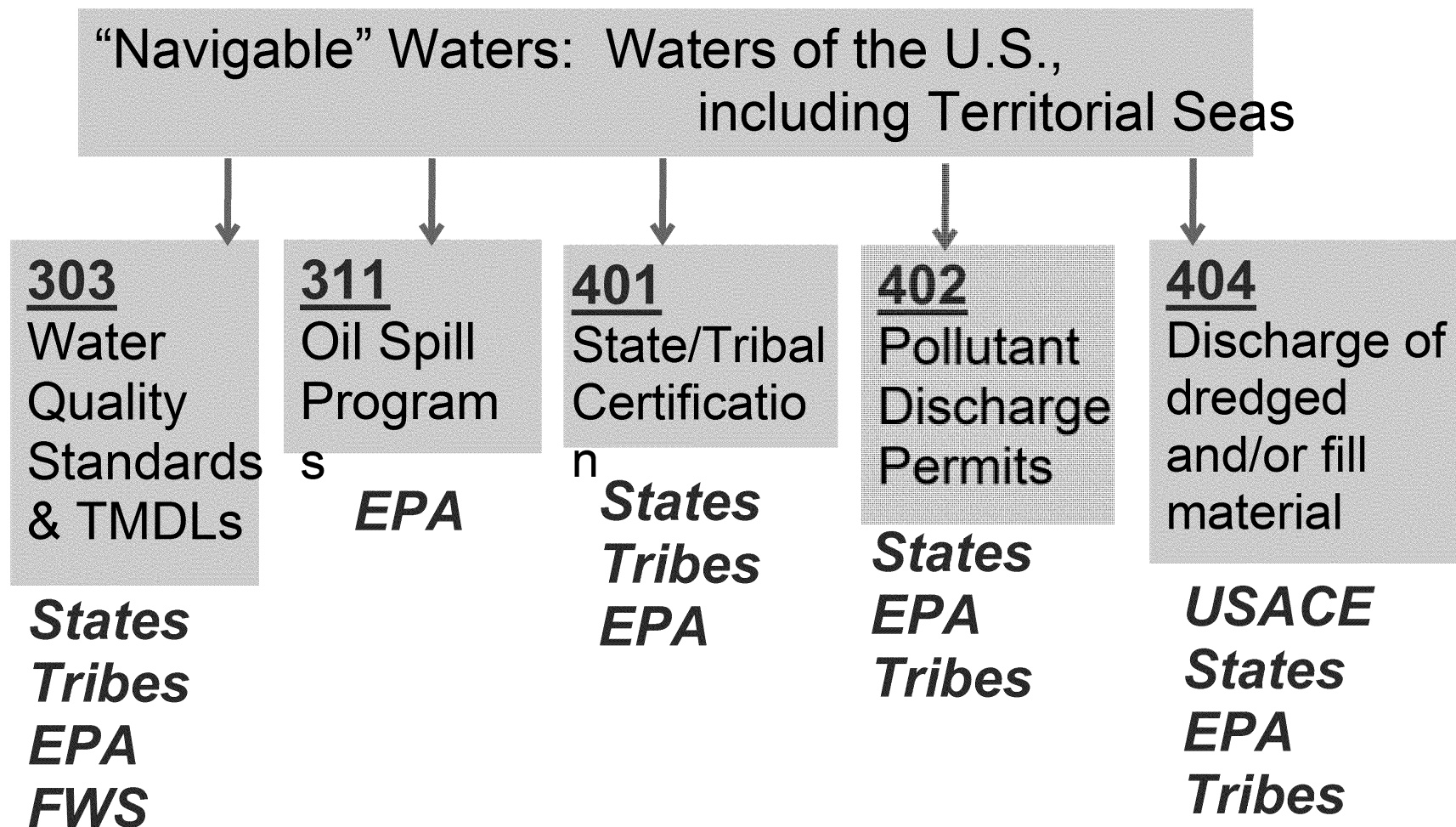


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Perennial plus
streams with
another
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Use
appropriate,
implementabl
e metrics,
e.g.,
frequency of
flow,
intersecting
water table

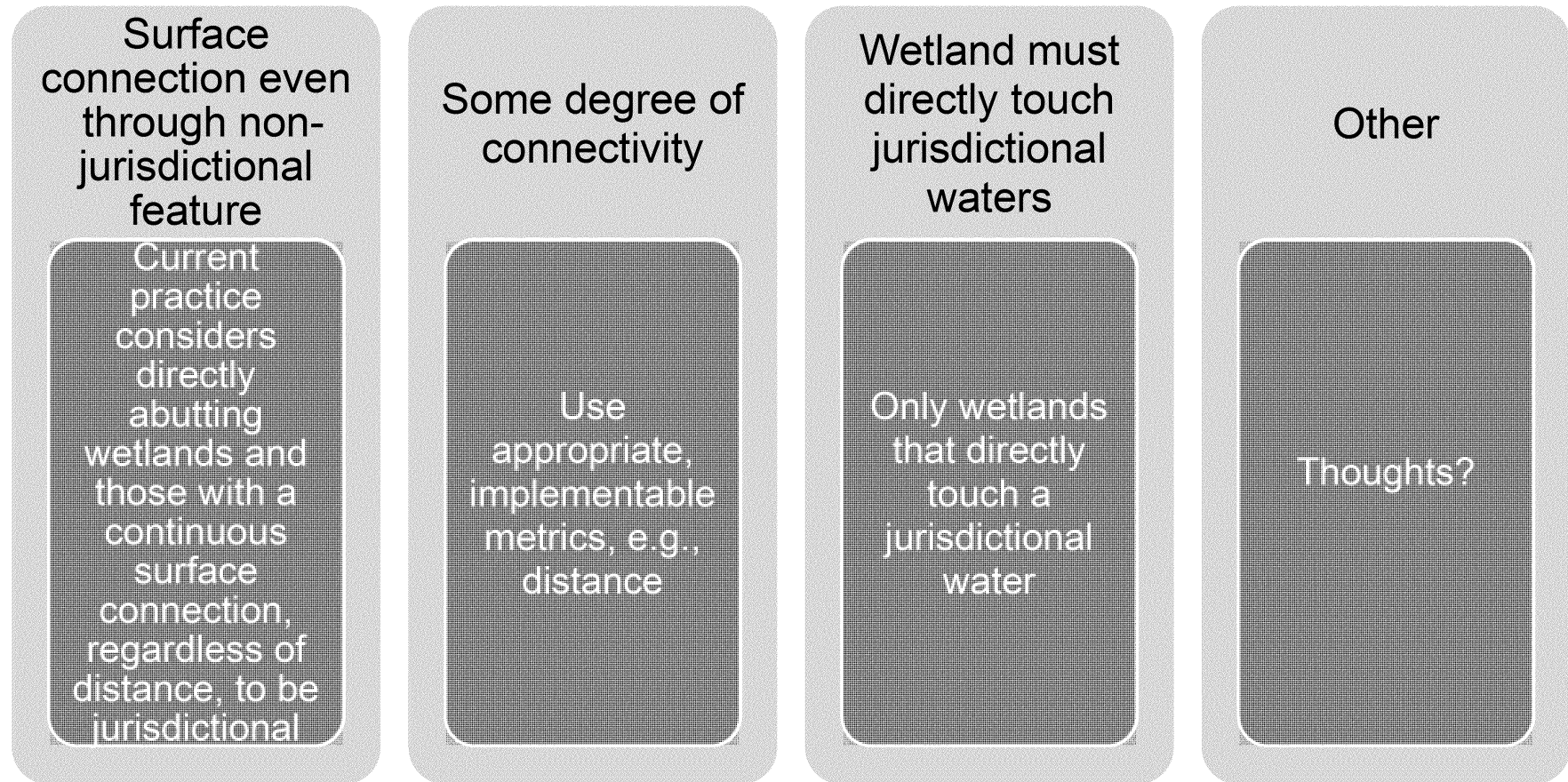
Perennial
streams only

Streams
that carry
flow
throughout
the
year except
in extreme
drought

Other

Thoughts
?

Potential Approaches to Wetlands with a “Continuous Surface Connection”



Questions and Discussion

- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
 - * How do you think a reduction in Clean Water Act jurisdiction might affect your Tribal water programs, such as 401 water quality certification or water quality standards?
 - * How might a change in definition and reduction in federal permitting affect other Tribal programs and interests?
 - * If the definition changes, what would be the best way to “get the word out” and provide training and information to Tribes?
-

Next Steps

- * **Regional Tribal Operations Council Conference Calls**
 - * June 22 – Region 8
 - * May schedule additional sessions at other RTOC calls/meetings
- * **June 14** – National Congress of the American Indians Mid Year Conference
- * **June 20** – Tribal consultation period concludes
 - * Comments can be submitted to CWAwotus@epa.gov and copied to Gude.Karen@epa.gov
- * **August 16** – Tribal Lands & Environment Forum

Contacts

Project Leads

- * Donna Downing (EPA)
 - * (202) 566-2428
 - * CWAwotus@epa.gov
- * Stacey Jensen (Army Corps of Engineers)
 - * (202) 761-5903
 - * USACE_CWA_Rule@usace.army.mil

Tribal Liaison Contacts

- * Karen Gude (EPA)
 - * (202) 564-0831
 - * Gude.karen@epa.gov
- * Chip Smith (Army)
 - * (703) 693-3655

For Additional Information

* **Please visit our new website at:**

* <https://www.epa.gov/wotus-rule>

TRAVEL AND LODGING INFORMATION
2017 NRT-RRT Co-Chairs Meeting
June 13 - 14, 2017
www.nrt.org/2017NRTMeeting

Schedule of Events

The 2017 National Response Team (NRT)-Regional Response Team (RRT) Co-Chairs Meeting will be held Tuesday, June 13 and Wednesday, June 14, 2017 at the Wyndham Grand Pittsburgh Downtown hotel in Pittsburgh, Pennsylvania. The meeting begins Tuesday morning at 8:00 am and ends at 5:00 pm on Wednesday. The meeting will be held in the Commonwealth Ballroom, located on the lobby level of the hotel.

In addition, the following breakout meetings are scheduled.

- ❖ EPA meeting (EPA only) – Monday, June 12, 2017, 2 pm – 4 pm.
- ❖ USCG MER meeting (USCG only) – Thursday, June 15, 2017, 8 am – 5 pm.

The Wyndham Grand Pittsburgh Hotel

The Wyndham Grand Pittsburgh Hotel is located at:
600 Commonwealth Place
Pittsburgh, PA 15222
Phone: (412) 391-4600

For additional information about the Wyndham Grand Pittsburgh Hotel, please visit www.wyndhamgrandpittsburgh.com/.

Sleeping Room Reservations

A block of sleeping rooms has been reserved at the Wyndham Grand Pittsburgh Hotel for participants to make their sleeping room reservations. **The deadline to reserve your sleeping room is Monday, May 29, 2017 by 5:00 pm. Eastern Time.**

The lodging rate is \$129 per night plus 14 percent tax. To make your sleeping room reservation at the Wyndham Grand Pittsburgh Hotel, call (888) 317-0197 and request the Nonresponsive Conference Code/ Ex. 6 room block. To make your reservation online visit the following link: **Nonresponsive Internal URL/ Ex. 6**. Select Attendee as your guest type and follow the remaining directions to confirm your reservation.

You are responsible for cancelling your hotel reservation if you cannot attend. The Wyndham requires a notice of cancellation 24 hours prior to the day of your scheduled arrival. If you fail to provide notice, one night's lodging and all applicable taxes will be charged to your credit card.

Hotel check-in begins after 4:00 pm, and check-out time is 12:00 pm.

Hotel Amenities and Features

The Wyndham offers the following amenities and features:

- ❖ Three Rivers Restaurant and Lounge (open daily from 6:30 am to 12:00 am) offers breakfast, lunch and dinner.
- ❖ Scenes Lobby Lounge is a place to relax and enjoy local beers and wines.
- ❖ Breakfast in-room dining is available from 6:30 am to 11:00 am; dining is available from 11:00 am to 11:00 pm.
- ❖ Complimentary fitness center available 24 hours with free weights, cardio workout machines and a pool.
- ❖ Complimentary high-speed wireless internet access in guest rooms.
- ❖ Complimentary shuttle service within a three-mile radius of the hotel.
- ❖ Complimentary AM and PM breaks during the meeting.

What to Pack for the Pittsburgh Area

Temperatures range from 55°F at night to 85°F during the day. Please be advised that temperatures in the hotel do not reflect temperatures outside. Be sure to pack a light jacket or sweater to wear while you attend the meeting.

Getting To Pittsburgh, Pennsylvania

The Pittsburgh area is served by the Pittsburgh International Airport (PIT), approximately 18 miles away from the Wyndham Grand Pittsburgh Hotel. Additional information about PIT is available at www.pitairport.com/.

Pittsburgh, Pennsylvania is located in the Eastern Time Zone.

Ground Transportation

SuperShuttle provides transportation from PIT to the Wyndham Grand Pittsburgh Downtown. The charge is \$24 one-way. SuperShuttle picks up at the arrivals curbs at the airport. Reservations can be made by calling (800) BLUEVAN or www.supershuttle.com.

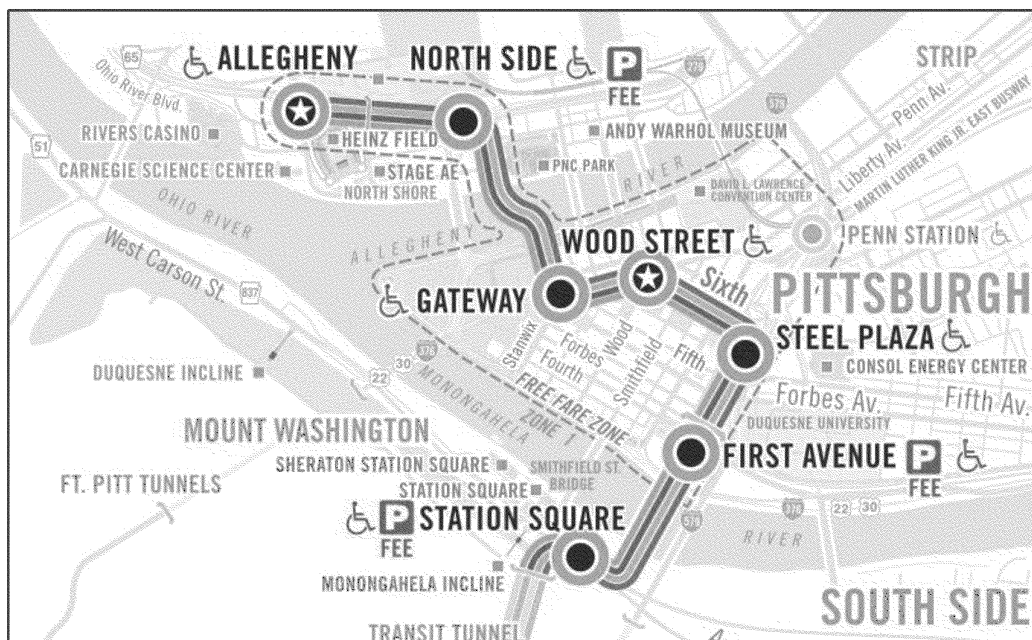
Taxi Service: Taxi fare between PIT and the Wyndham is approximately \$50 one-way, not including gratuity.

28X Airport Flyer via West Busway: The 28X Airport Flyer provides access from PIT to downtown Pittsburgh via the West Busway. The bus runs approximately every 30 minutes out of Door 6 in the Baggage Claim area. The cost is \$3.75 one way; exact change is required when paying your fare. For transportation to the Wyndham, you would exit at the Liberty Avenue at Gateway #4 stop. For transportation back to the airport, you would board the bus at the Liberty Avenue near the Wyndham Grand Hotel stop. Additional information about the 28X Airport Flyer is available at www.portauthority.org/paac/SchedulesMaps/AirportService.aspx.

Hotel Parking: The Wyndham offers valet parking with unlimited in and out privileges. The cost is \$30 per night. Several self-parking garages are available in the vicinity of the Wyndham with daily rates up to \$25 per day with no in and out privileges.

Public Transportation in Downtown Pittsburgh

The Light Rail / T System provides transportation in the downtown Pittsburgh area. Within the free zone, there is no cost to ride the Light Rail. Within the other zones, the cost ranges from \$3.25 to \$4.50 per ride. Additional information about the Light Rail / T System is available at www.portauthority.org/paac/.



Driving Directions to the Wyndham from the North

- ❖ Take I-79 South
- ❖ Merge onto I-279 South toward Pittsburgh
- ❖ Take Exit 1A on the left to Ft. Duquesne Boulevard
- ❖ Turn right at Stanwix Street
- ❖ Stay right on Penn Avenue
- ❖ Turn right onto Commonwealth Place

Driving Directions to the Wyndham from the South

- ❖ Take I-79 North
- ❖ Merge onto I-376 East via Exit 59A towards Pittsburgh
- ❖ Take Exit 70A to Liberty Avenue
- ❖ Turn left onto Commonwealth Place

Driving Directions to the Wyndham from the East

- ❖ Take I-376 West
- ❖ Take Exit 70D on the left to Stanwix Street
- ❖ Turn left at Ft. Pitt Boulevard
- ❖ Turn right on Commonwealth Place

Driving Directions to the Wyndham from the West

- ❖ Take I-376 East
- ❖ Take Exit 70A to Liberty Avenue
- ❖ Turn left onto Commonwealth Place



**AGENDA
WOTUS MEETING**

Wednesday, May 31, 2017

10:00-10:45am

WJC EAST 3233

Telecom:

Nonresponsive Conference Code/ Ex. 6

1. Introductions (3 minutes)
2. Rulemaking Updates (35 minutes)

Deliberative Process / Ex. 5

3. Next steps (2 min)

Upcoming Stakeholder discussions

a. E.O. 12866 Meetings

1. Thurs. 6/1 - Clean Water Action
2. Mon. 6/5 - PolicyLink 1-1:30
3. Mon. 6/5 - Don Parrish AFBF 2-2:30
4. Thurs. 6/8 - NMA at OMB 11-11:30

b. Federalism

1. Wed. 5/31 NASDA 4-5
2. Fri. 6/2 WSWC 2-3
3. Tues. 6/6 ASWM 2-3
4. Wed. 6/7 LGAC
5. Looking ahead -
 - Wed. 6/7 NAFSMA 2-3
 - Thurs. 6/8 WGA 1-2
 - Fri. 6/9 ACWA 3-4

c. Tribal Consultation and Coordination

1. Wed. 5/31 Tolowa Dee-ni' Nation 12-1
2. Tues. 6/6 R6 RTOC 11:30-12
3. Wed. 6/7 R4 RTOC 11-12
4. Looking ahead -
 - Wed. 6/14 NCAI Conference 12-1
 - Tues. 6/20 Snoqualmie Tribe 2-3
 - Thurs. 6/22 R8 RTOC

Definition of “Waters of the U.S.”

Informational Webinar for Tribes in Consultation and
Coordination Process

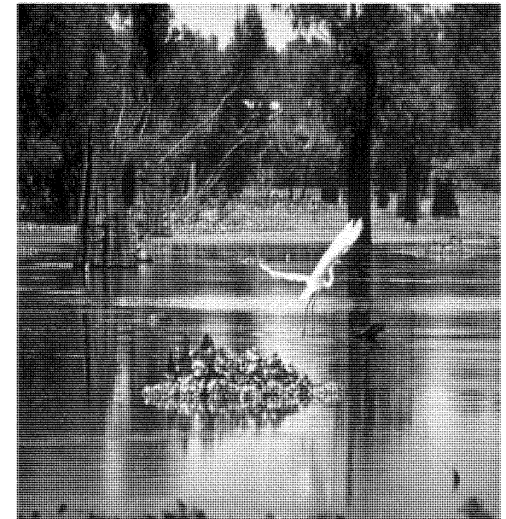
Region 6 RTOC – June 6, 2017

Why Are We Here?

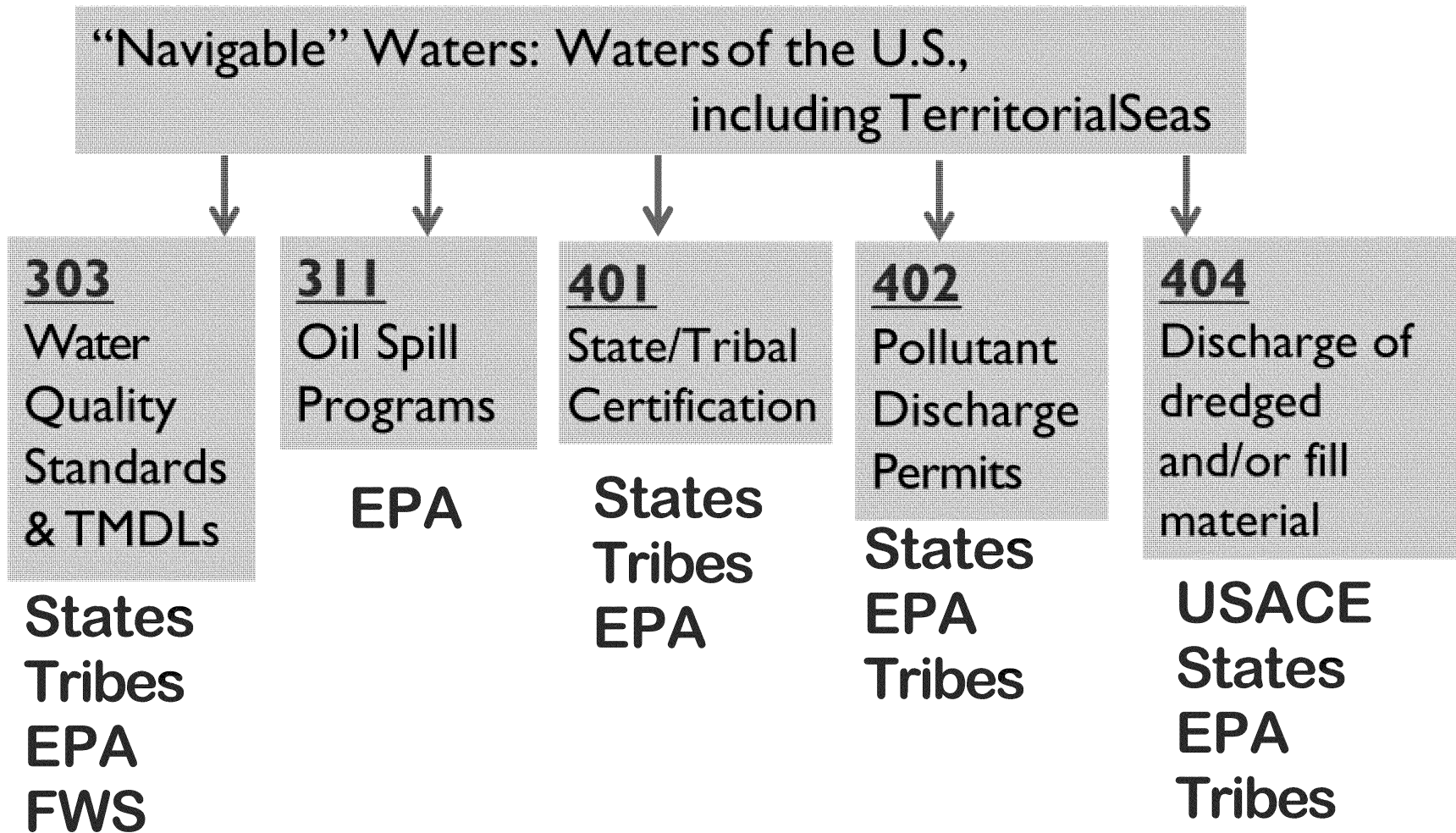
- * The EPA and Army are beginning our consultation and coordination with Tribal governments early in the process of our agencies' rulemaking.
- * This presentation will provide you with information regarding EPA and Army's preliminary thoughts and ideas as to which waters the Clean Water Act applies.
- * The agencies are seeking your feedback about how our potential rulemaking might affect Tribes.

Clean Water Act

- * Goals:
 - * “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters”
 - * “to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution”
- * Section 518: Treatment in a Similar Manner as States



Why “Waters of the U.S.” Matter



“Waters of the U.S.” Over Time

- * From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of CWA jurisdiction.
- * Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.
- * The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are—and are not—covered by the CWA.
- * The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including some Tribes, expressed concerns with the 2015 Rule and it is currently being litigated.
- * The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

- * On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”
- * The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”
- * The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.
- * <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Rulemaking Process

- * The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.
 - 1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
 - 2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.
- * The agencies are aware that the scope of CWA jurisdiction is of intense interest to many Tribes and stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.
- * In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

- * While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.
- * To provide greater certainty, the agencies will move to reinstate the pre-existing regulations and guidance and to withdraw the 2015 Clean Water Rule.
- * In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the 2015 Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.
- * The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

- * Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes **relatively permanent waters** and wetlands with a **continuous surface connection** to relatively permanent waters.
- * The agencies are consulting with Tribes and with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current
practice:
seasonal
flow = about
3 months
(varies
regionally)

Perennial plus
streams with
another measure
of flow

Use
appropriate,
implementable
metrics, e.g.,
frequency of
flow,
intersecting
water table

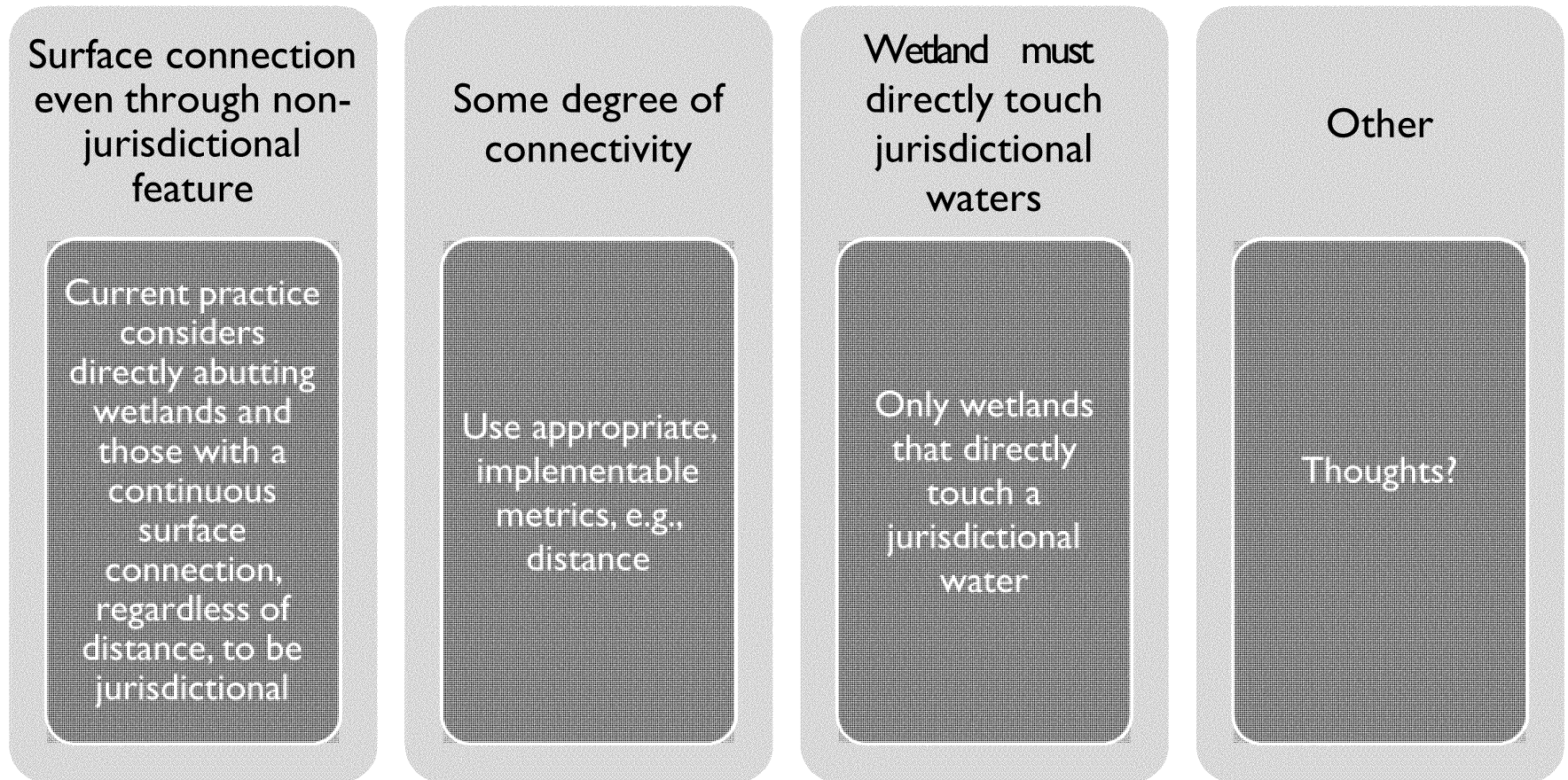
Perennial
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Streams
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Potential Approaches to Wetlands with a “Continuous Surface Connection”



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- * How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented?
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- * How might a change in definition and reduction in federal permitting affect other Tribal programs and interests?
- * If the definition changes, what would be the best way to “get the word out” and provide training and information to Tribes?

Next Steps

- * **Regional Tribal Operations Council Conference Calls**

- * June 7 – Region 4

- * June 22 – Region 8

- * May schedule additional sessions at other RTOC calls/meetings

- * **June 14 – National Congress of the American Indians Mid Year Conference**

- * **June 20 – Tribal consultation period concludes**

- * Comments can be submitted to CWAwotus@epa.gov and copied to Gude.Karen@epa.gov

- * **August 16 – Tribal Lands & Environment Forum**

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- * Stacey Jensen (Army Corps of Engineers)
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 - * USACE_CWA_Rule@usace.army.mil

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 - * Gude.karen@epa.gov
- * Chip Smith (Army)
 - * (703) 693-3655

For Additional Information

*** Please visit our new website at:**

*** <https://www.epa.gov/wotus-rule>**

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
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LOUISIANA

Chitimacha Tribe of Louisiana P. O. Box 661 Charenton, LA 70523 Ph.: 337-923-4973 Fax:337-923-6848		
Coushatta Tribe of Louisiana P. O. Box 818 Elton, LA 70532 Ph.: 337-584-1401 Fax: 337-584-1507		Chris Williams, Environmental Program Manager Bethany LeDoux, Environmental Staff
Jena Band of Choctaw Indians P.O. Box 14 Jena, LA 71342 <i>(Fed Ex Only: 1052 Chanana Hina St. Trout, LA 71371)</i> Ph.: 318-992-2763 Fax: 318-992-4162		
Tunica-Biloxi Indian Tribe P.O. Box 1589 Marksville, LA 71351 Ph.: 318-253-9767 Fax: 318-253-9791		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
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NEW MEXICO

Pueblo of Acoma P.O. Box 309 Acoma, NM 87034 Ph.: 505-552-6604/6605 Fax: 505-552-7204		
Pueblo of Cochiti P.O. Box 70 Cochiti, NM 87072 505-465-2244/0234 FAX: 505-465-1135		Gene Ka-hee, Environmental Staff
Pueblo of Isleta P.O. Box 1270 Isleta, NM 87022 Ph.: 505-869-9760 Fax: 505-869-4236		Ramona Montoya, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of Jemez P.O. Box 100 Jemez, NM 87024 Ph.: 575-834-7359 Fax: 575-834-7331		
Jicarilla Apache Nation P.O. Box 507 Dulce, NM 87528 Ph.: 575-759-3242 Fax: 575-759-3005		
Pueblo of Santo Domingo P.O. Box 99 Santo Domingo, NM 87052 Ph.: 505-465-2214 Fax: 505-465-2688		Cynthia Naha, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of Laguna P.O. Box 194 Laguna, NM 87026 Ph.: 505-552-6654 Fax: 505-552-6941		
Mescalero Apache Tribe P.O. Box 227 Mescalero, NM 88340 (Shipping Address to EPA office: 268 Pine Street, Mescalero, NM 88340) Ph.: 575-464-4494 Fax: 575-464-9191		
Pueblo of Nambe Route 1, Box 117BB Santa Fe, NM 87506 Ph.: 505-455-2036 Fax: 505-455-2038		Tara Weston, Water Quality Technician

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of Picuris P.O. Box 127 Penasco, NM 87553 Ph.: 575-587-2519 Fax: 575-587-1071		
Pueblo of Pojoaque 78 Cities of Gold Road Santa Fe, NM 87506 Ph.: 505-455-3334 Fax: 505-455-0174		
Pueblo of Sandia 481 Sandia Loop Bernalillo, NM 87004 Ph.: 505-867-3317 Fax: 505-867-9235		Sharron Henderson, Environmental Staff

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of San Felipe P.O. Box 4339 San Felipe, NM 87001 Ph.: 505-867-3381 Fax: 505-867-3383		Pinu'u Stout, Environmental Director
Pueblo of San Ildefonso 02 Tunyo Po Santa Fe, NM 87506 Ph.: 505-455-2273 Fax: 505-455-7351		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Ohkay Owingeh P.O. Box 1099 Ohkay Owingeh, NM 87566 Ph.: 505-852-4400 Ph.: 505-852-4210 Fax: 505-852-4820		Naomi Archuleta, Water Quality Program Mgr.
Pueblo of Santa Ana 2 Dove Road Santa Ana Pueblo, NM 87004 Ph.: 505-867-3301 Fax: 505-867-3395		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of Santa Clara P.O. Box 580 Espanola, NM 87532 Ph.: 505-753-7330 Fax: 505-753-8988		Dino Chavarria, Environmental Director
Pueblo of Taos P.O. Box 1846 Taos, NM 87571 Ph.: 575-758-9593 Fax: 505-758-4604		Cherilyn Atcitty, Environmental Manager
Pueblo of Tesuque Route 42, Box 360-T Santa Fe, NM 87506 505-955-7732 Fax: 505-982-2331		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Pueblo of Zia 135 Capitol Square Drive Zia Pueblo, NM 87053-6013 Ph.: 505-867-3304 Fax: 505-867-3308		
Pueblo of Zuni P.O. Box 339 Zuni, NM 87327 Ph.: 505-782-7022 Fax: 505-782-2700		
Eight Northern Indian Pueblos Council P.O. Box 969 San Juan Pueblo, NM 87566 Ph.: 505-747-1593 Fax: 505-455-1599		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
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OKLAHOMA

Absentee-Shawnee Tribe of Indians of Oklahoma 2025 South Gordon Cooper Dr Shawnee, OK 74801-9381 Ph.: 405-275-4030 Fax: 405-275-5637		Ken Jones, Environmental Director
Alabama-Quassarte Tribal Town P. O. Box 187 Wetumka, OK 74883 Ph.: 405-452-3987 Fax: 405-452-3968		
Apache Tribe of Oklahoma P.O. Box 1330 Anadarko, OK 73005 Ph.: 405-247-9493 Fax: 405-247-2686		Teresa Taylor, Tribal Administrator /Acting Environmental Director
Caddo Nation of Oklahoma P.O. Box 487 Binger, OK 73009 Ph.: 405-656-2344/2345 Fax: 405-656-2892		Polly Edwards, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Cherokee Nation P.O. Box 948 Tahlequah, OK 74465 Ph.: 918-453-5000 Fax: 918-853-3407		Sara Hill, Secretary of Natural Resources Tom Elkins, Administrator for Environmental Programs Nancy John, Program Manager Karen Dye, Environmental Staff
Cheyenne and Arapaho Tribes P.O. Box 38 Concho, OK 73022 Ph.: 405-262-0345 Fax: 405-422-7425		Damon Dunbar, Acting Environmental Director
The Chickasaw Nation P.O. Box 1548 Ada, OK 74821-1548 Ph.: 580-436-2603 Fax: 580-436-4287		Linda Robins, Director of Environmental Services
The Choctaw Nation of Oklahoma P.O. Box 1210, 16th & Locust Streets Durant, OK 74702-1210 Ph.: 580-924-8280 Fax: 580-924-1150		Melissa Robinson, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Citizen Potawatomi Nation 1601 S Gordon Cooper Dr Shawnee, OK 74801 Ph.: 405-275-3121 Fax: 405-275-0198		Shawn Howard, Assistant Environmental Director
Comanche Nation P.O. Box 908 Lawton, OK 73502 Ph.: 580-492-4988 Fax: 580-492-3796		Lynn Schonchin, Assistant Director
Delaware Nation P.O. Box 825 Anadarko, OK 73005 Ph.: 405-247-2448 Fax: 405-247-9393		
Delaware Tribe of Indians 5100 Tuxedo Blvd. Bartlesville, OK 74006-2838 Ph.: 918-337-6593 Fax: 918-337-6591		
Eastern Shawnee Tribe of Oklahoma 12755 S. 705 Rd. Wyandotte, OK 74370 Ph.: 918-666-2435 Fax: 888-971-3905		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Fort Sill Apache Tribe of Oklahoma Route 2, Box 121 Apache, OK 73507 Ph.: 580-588-2298 Fax: 580-588-3133		Jennifer M. Heminokey, Environmental Director
Iowa Tribe of Oklahoma R.R. 1, Box 721 Perkins, OK 74059 Ph.: 405-547-2402 Fax: 405-547-1032		
Kaw Nation Drawer 50 Kaw City, OK 74641 Ph.: 580-269-2552 Fax: 580-269-2368		
Kialegee Tribal Town P.O. Box 332 Wetumka, OK 74883 Ph.: 405-452-3262 Fax: 405-452-3413		
Kickapoo Tribe of Oklahoma P.O. Box 70 McLoud, OK 74851 Ph.: 405-964-4227 Fax: 405-964-4267		Darren Shields, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Kiowa Indian Tribe of Oklahoma P.O. Box 369 Carnegie, OK 73015 Ph.: 580-654-2300 Fax: 580-654-2972		
Miami Tribe of Oklahoma P.O. Box 1326 Miami, OK 74355-1326 Ph.: 918-542-1445 Fax: 918-542-7260		Heather Webb, Environmental Director
The Modoc Tribe of Oklahoma 418 G Street SE Miami, OK 74354-8224 Ph.: 918-542-1190 Fax: 918-542-5415		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
The Muscogee (Creek) Nation P.O. Box 580 Okmulgee, OK 74447 Ph.: 918-756-8700 Fax: 918-758-1434		
The Osage Nation Tribal Administration Building, P. O. Box 779 Pawhuska, OK 74056 Ph.: 918-287-5555 Fax: 918-287-5562		Jann Hayman, Environmental Director Craig Walker, Environmental Staff Beverly LeCrone, Environmental Staff
Otoe-Missouria Tribe of Indians 8151 Highway 177 Red Rock, OK 74651 580-723-4434/4466 Fax: 580-723-4273		Angela Heim, Environmental Coordinator

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Ottawa Tribe of Oklahoma P.O. Box 110 Miami, OK 74355 Ph: 918-540-1536 Fax: 918-542-3214		Cheryl Stafford, Environmental Director
Pawnee Nation of Oklahoma P.O. Box 470 Pawnee, OK 74058 Ph.: 918-762-3624/3621 Fax: 918-762-6446		
Peoria Tribe of Indians of Oklahoma P.O. Box 1527 Miami, OK 74355 Ph.: 918-540-2535 Fax: 918-540-2538		Erin Barnes, Environmental Director

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Ponca Tribe of Indians of Oklahoma 20 White Eagle Drive Ponca City, OK 74601 Ph.: 580-762-8104 Fax: 580-762-2743		
The Quapaw Tribe of Indians P.O. Box 765 Quapaw, OK 74363 Ph.: 918-542-1853 Fax: 918-542-4694		Tim Kent, Environmental Director Craig Kreman, Air Program Director
Sac & Fox Nation Route 2, Box 246 Stroud, OK 74079 Ph.: 918-968-3526 Fax: 918-968-4837		Jeremy Fincher, Environmental Director
The Seminole Nation of Oklahoma P.O. Box 1498 Wewoka, OK 74884 Ph.: 405-257-7200 Fax: 405-257-7209		Jennifer Kelly, Environmental Staff

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Seneca-Cayuga Nation 23701 S. 655 Road, Hwy 10 Grove, OK 74344 Ph: 918-787-5452 Fax: 918-787-944		Micco Emarthla, Water Quality Technician
Shawnee Tribe 29 South Highway 69A Miami, OK 74354 Ph.: 918-542-2441 Fax: 918-542-2922		
Thlopthlocco Tribal Town P.O. Box 188 Okemah, OK 74859 Ph.: 918-560-6198 Fax: 918-560-6195		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Tonkawa Tribe of Indians of Oklahoma 1 Rush Buffalo Road Tonkawa, OK 74653 580-628-2561 Fax: 580-628-3375		
United Keetoowah Band of Cherokee Indians of Oklahoma P.O. Box 746 Tahlequah, OK 74465-0746 Ph.: 918-431-1818 Fax: 918-431-1873		Eric Oosahwee-Voss, Natural Resources Director
Wichita and Affiliated Tribes P.O. Box 729 Anadarko, OK 73005 Ph.: 405-247-2425 Fax: 405-247-2430		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
Wyandotte Nation 64790 East Highway 60 Wyandotte, OK 74370 Ph: 918-678-2297/98 Fax: 918-678-2944		

June 6 RTOC Call Tribal Attendance List

TRIBAL ADDRESS		TRIBAL CONTACTS ON CALL
----------------	--	-------------------------

TEXAS

Alabama-Coushatta Tribe of Texas 571 State Park Road 56 Livingston, TX 77351 Ph.: 936-563-1100 Fax: 936-563-1341		Amon Sylestine, Water Quality Specialist
Kickapoo Traditional Tribe of Texas 2212 Rosita Valley Rd. Eagle Pass, TX 78852 830-773-2105 Fax: 830-757-9228		
Ysleta del Sur Pueblo 119 S. Old Pueblo Rd. El Paso, TX 79907 915-859-7913 Fax: 915-859-2988		Evaristo Cruz, Director of Environmental Management,

To: Downing, Donna[Downing.Donna@epa.gov]
From: Horchem, Brad
Sent: Thur 5/4/2017 8:56:28 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Donna,

Could you please add Steve Kovac to the Workgroup.

Steve is my supervisor.

Thanks

Brad

From: Downing, Donna
Sent: Thursday, May 04, 2017 12:24 PM
To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James

<Morgan.James@epa.gov>

Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

Deliberative Process / Ex. 5

The “read only” version can be found here:

Nonresponsive Internal URL/ Ex. 6

The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Somerville, Eric
Sent: Thur 5/4/2017 8:01:16 PM
Subject: USGS hydrological definitions

In case this is ultimately useful in some way:

Deliberative Process / Ex. 5

Eric Somerville

U.S. EPA Region 4 | Ocean, Wetlands & Streams Protection Branch

c/o SESD (F120-6) | 980 College Station Road | Athens, GA 30605-2720

tel 706.355.8514 | somerville.eric@epa.gov

From: Downing, Donna

Sent: Thursday, May 04, 2017 1:24 PM

To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah

<ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>

Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

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Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]; Brush, Jason[Brush.Jason@epa.gov]; Amato, Paul[Amato.Paul@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Charles Smith[charles.r.smith567.civ@mail.mil]
From: Louis, Gail
Sent: Thur 5/4/2017 7:52:36 PM
Subject: RE: List so far of webinar registrants for RTOC
[img-504124141-0001.pdf](#)
[CWA Workshop. Spring 2017.DRAFT.4.27.17.pdf](#)

Hi – I'm attaching a pdf of the two (competing, unfortunately) signup sheets from today's WOTUS info session at our RTOC. Some people signed both, some signed just one, some didn't sign either. We told people that we would post the slides on the RTOC website.

In addition, FYI, I'm attaching the agenda for the Region 9 CWA Tribal Training being held 5/14-19 in Parker Arizona. This is the conflict t people were referencing when the 5/18 webinar date came up.

~ Gail

~~~~~>(((^>~~~~~>(((^>~~~~~>(((^>  
Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division  
75 Hawthorne Street (WTR-3-4)  
San Francisco, CA 94105  
Phone: (415) 972-3467  
Fax: (415) 947-3537  
Email: [louis.gail@epa.gov](mailto:louis.gail@epa.gov)

~~~~~>(((^>~~~~~>(((^>~~~~~>(((^>

From: Kwok, Rose

Sent: Thursday, May 4, 2017 9:15 AM

To: Brush, Jason <Brush.Jason@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Charles Smith <charles.r.smith567.civ@mail.mil>

Subject: List so far of webinar registrants for RTOC

Hi Folks,

FYI, here is the list of folks we registered for the RTOC webinar (2 tribes with 4 participants).

Paul/Gail – can we get a list of the folks in the room and their tribal affiliation and email addresses? We plan to send out a PDF of the slides to those in the room and on the webinar.

Thanks,

Rose

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: McCarthy, Julia[McCarthy.Julia@epa.gov]
From: Livingston, Peggy
Sent: Thur 5/4/2017 6:05:32 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Privileged (Deliberative Process, Attorney-Client, Work Product, etc.)

Deliberative Process / Ex. 5

Sorry I have that other meeting at 3 pm Eastern today.

Peggy Livingston

Senior Enforcement Attorney

Legal Enforcement Program

U.S. EPA Region 8

1595 Wynkoop St.

Denver, CO 80202

(303) 312-6858 (phone)

(303) 312-7202 (fax)

From: Downing, Donna

Sent: Thursday, May 04, 2017 11:24 AM

To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>

Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

The “read only” version can be found here:

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The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Gude, Karen
Sent: Thur 5/4/2017 5:36:56 PM
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Hi Rose,

Thanks. The file has been uploaded to TCOTS, and can be found on EPA's here:

Nonresponsive Internal URL/ Ex. 6 located under "Proposal to Revise the Definition of "Waters of the United States."

If you should need anything more, please do not hesitate to let me know. I'll be coming over to sit in on the webinar in a few minutes.

Thanks again,

Karen

From: Kwok, Rose
Sent: Thursday, May 04, 2017 1:25 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Here's the version for posting. Can you please send us a link when you have one? And I had meant the TCOTS database earlier and not the portal – thanks for reading my mind.

I'll also post copies to the outreach folders that we share with the regions.

From: Christensen, Damaris
Sent: Thursday, May 04, 2017 11:28 AM
To: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna

<Downing.Donna@epa.gov>

Subject: RE: Waters of the United States - Tribal Webinar Thank You

I think we should post a pdf of the powerpoint.

Damaris

From: Gude, Karen

Sent: Thursday, May 04, 2017 11:23 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: Waters of the United States - Tribal Webinar Thank You

AIEO's tribal portal/website has moved here: <https://www.epa.gov/tribal>.

I can have the powerpoint slides and any supplemental consultation materials posted to the WOUS entry in the TCOTS database

Nonresponsive Internal URL/ Ex. 6

Currently, we've have the signed consult letter posted to TCOTS.

Thanks,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Kwok, Rose

Sent: Thursday, May 04, 2017 10:58 AM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>
Subject: FW: Waters of the United States - Tribal Webinar Thank You

Hi Mindy,

We said we would make the slides available. How would you like me to share the slides (of course as a PDF)? I can email them to the participants.

Karen – does the tribal portal website no longer exist?

From: Erin Woodward [<mailto:ewoodward@lagunapueblo-nsn.gov>]
Sent: Thursday, May 04, 2017 10:13 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Waters of the United States - Tribal Webinar Thank You

Hello Ms. Kwok,

Will the slides for the webinar be made available?

Thank you,

E. Nikki Woodward

Water Quality Specialist|Pueblo of Laguna

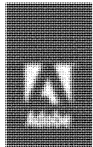
Phone: [505.552.5040](tel:505.552.5040)|ewoodward@lagunapueblo-nsn.gov

From: Rose Kwok [mailto:epacallcenter@epa.gov]
Sent: Friday, April 28, 2017 1:32 AM
To: Erin Woodward <ewoodward@lagunapueblo-nsn.gov>
Subject: Waters of the United States - Tribal Webinar Thank You

Thank you for attending "Waters of the United States - Tribal Webinar". We appreciate your participation and hope you found the event valuable.

Thank you,

Rose Kwok



If you've never used Adobe Connect, get a quick overview:
<http://www.adobe.com/products/adobeconnect.html>

Adobe, the Adobe logo, Acrobat and Adobe Connect are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

To: Downing, Donna[Downing.Donna@epa.gov]
From: McCarthy, Julia
Sent: Thur 5/4/2017 5:24:27 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I am out of the office until May 5. Please contact Karen Hamilton at hamilton.karen@epa.gov if you require assistance before my return.

Thank you,

Julia

To: Downing, Donna[Downing.Donna@epa.gov]
From: Fontenot, Alison
Sent: Thur 5/4/2017 5:24:26 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hello,

I will be out of the office in training from Monday May 1 - Friday May 5th, and will have limited access to email during this time. I will return your message as soon as possible when I return to the office.

If you need immediate help with an urgent matter, please contact Maria Martinez (Wetlands Section Chief) x2230.

Thank you,

Alison Fontenot

To: Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Thur 5/4/2017 5:24:26 PM
Subject: Automatic reply: Recurring WOTUS Regional/HQ Staff workgroup meeting

I will be out of the office until May 16. Please contact Kerryann Weaver at 312-353-9483 or Peter Swenson at 312-886-0236. I will respond to your email when I return. Thank you.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Moffatt, Brett
Sent: Thur 5/4/2017 4:08:30 PM
Subject: please add me to the WOTUS call list

Thanks!

Brett Moffatt

US EPA, Region 9, ORC

(415) 972-3946

From: Kwok, Rose
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: New Time Proposed: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

Donna - this meeting overlaps with the Tribal Webinar (from 1:30-3:30 on May 18). Can you please move the time either up or back?

Thanks!

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 5/4/2017 3:40:31 PM
Subject: RE: staffing

I've added a calendar called WOTUS calendar. I don't know how to link it our Outlook calendars but will try to find out.

Nonresponsive Internal URL/ Ex. 6

From: Christensen, Damaris
Sent: Thursday, May 04, 2017 12:19 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: staffing

Deliberative Process / Ex. 5

Also Rose not that this fits in this email but since I just remembered – can you turn on the calendar function in Sharepoint? So we can try to keep track of various events happening the same week?

Damaris

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Mayo, Alice[Mayio.Alice@epa.gov]; Holdsworth, Susan[Holdsworth.Susan@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Nandi, Romell
Sent: Thur 5/4/2017 2:41:01 PM
Subject: REMINDER: OW Action Tracker for May due TODAY at 5pm ...
4-26-2017redOW Action Tracker.April.2017.xlsx

Just a reminder that your OW Action Tracker updates are due to me **by 5pm today**.

Susan – **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Romell

From: Nandi, Romell
Sent: Thursday, April 27, 2017 4:46 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Weiler, Katherine <weiler.katherine@epa.gov>; Robiou, Grace <Robiou.Grace@epa.gov>; Mayo, Alice <Mayio.Alice@epa.gov>; Holdsworth, Susan <Holdsworth.Susan@epa.gov>; Groman, Hazel <Groman.Hazel@epa.gov>; Reumann-Moore, Kyra <Reumann-Moore.Kyra@epa.gov>; Kathy Hurld (Hurld.Kathy@epa.gov) <Hurld.Kathy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: OW Action Tracker for May -- input requested by 5pm on Thursday, 5/4
Importance: High

All:

It is time to update the OW Action Tracker, for May. See April version, attached.

Please provide any updates **by 5pm on Thursday, May 4.**

You can just make any changes in redline/strikeout in the tracker itself. If you are not changing anything, please just tell me, “no changes” rather than not responding.

OWOW items currently in the Tracker are listed below (on page 8). **If your item is in Scout and you are changing the date, please inform Tomeka Nelson so that the date in Scout is consistent with the date in the Tracker.**

Rules

Deliberative Process / Ex. 5

-

Reports

Deliberative Process / Ex. 5

FACA

Deliberative Process / Ex. 5

Thanks.

Romell

566-1203

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kovatch, Charles
Sent: Wed 5/3/2017 10:49:08 PM
Subject: RE: Monthly Wetlands Regional Managers call

Donna

Kudos to you and others on the team who sent the WOTUS Step 1 version to OMB!!

Charles

From: Downing, Donna
Sent: Wednesday, May 3, 2017 4:34 PM
To: Able, Tony <Able.Tony@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Derby, Jennifer <Derby.Jennifer@epa.gov>; Hamilton, Karen <Hamilton.Karen@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; LeClair, Jacqueline <Leclair.Jackie@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Martinsen, Jessica <Martinsen.Jessica@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Szerlog, Michael <Szerlog.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kovatch, Charles <Kovatch.Charles@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>
Cc: Weaver, Kerryann <weaver.kerryann@epa.gov>; Shaw, Hanh <Shaw.Hanh@epa.gov>
Subject: Monthly Wetlands Regional Managers call

Hi Regional managers:

Mindy and I talked, and concluded that the primary update we have for the Regional Branch Chiefs Update Meeting is that the Step 1 WOTUS rule went to OMB review last Friday and has been logged in on OMB's public website. Given the limited agenda, we think we'll cancel tomorrow's meeting.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

So Expect to see a cancellation notice for tomorrow's BC update meeting shortly.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Doley, Todd[Doley.Todd@epa.gov]
From: Hewitt, Julie
Sent: Wed 5/3/2017 10:43:14 PM
Subject: Governors letter

Hi there,

Deliberative Process / Ex. 5

Thanks,

Julie

Julie Hewitt

Associate Director for Economics

Engineering and Analysis Division

Office of Science & Technology, Office of Water

U.S. Environmental Protection Agency

EPA West Building

1200 Pennsylvania Avenue, N.W.

Room 6233-H and Mail Code 4303T
Washington, DC 20460

(202) 566-1031

(202) 566-1053 fax

Hewitt.Julie@epa.gov

<https://www.epa.gov/eg>

<https://www.epa.gov/cooling-water-intakes>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Wed 5/3/2017 8:41:24 PM
Subject: RE: Monthly Wetlands Regional Managers call

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Wednesday, May 03, 2017 3:34 PM
To: Able, Tony <Able.Tony@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Derby, Jennifer <Derby.Jennifer@epa.gov>; Hamilton, Karen <Hamilton.Karen@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; LeClair, Jacqueline <Leclair.Jackie@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Martinsen, Jessica <Martinsen.Jessica@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Szerlog, Michael <Szerlog.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kovatch, Charles <Kovatch.Charles@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>
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Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Gude, Karen
Sent: Wed 5/3/2017 8:19:10 PM
Subject: Re: For quick review: updated WOTUS TPs needed by Benita asap

Hi Damaris,

Thanks. Just confirming that I believe that tribal consult began **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Karen

Sent from my iPhone

On May 3, 2017, at 4:07 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

So I think I'd rather say:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'm copying Karen in case she wants to weigh in on how tribes will best respond to our characterization.

Thoughts?

From: Downing, Donna
Sent: Wednesday, May 03, 2017 3:16 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: updated WOTUS TPs needed by Benita asap

Hi Mindy and Damaris:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Benita is giving a presentation on Monday and has requested updated TPs this afternoon. Russ K. also is giving a presentation next week (leaving on Monday am) and similarly needs updated basic TPs.

Could you take a quick look at my updates and let me know if they're OK to share for use by Benita and Ruse? Thanks! Ideally I could send these 4ish to meet their timeframe. Thanks!

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Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Brush, Jason
Sent: Wed 5/3/2017 8:08:01 PM
Subject: FW: Final WOTUS ppt for R9 RTOC ?
WOTUS2 tribal info and consultation - R9.RTOC.Brush.pptx

Deliberative Process / Ex. 5

Thanks - Jason

Jason A. Brush
Acting Assistant Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (WTR-2)
San Francisco, CA 94105

~~~~~  
**desk: 415.972.3483**  
~~~~~

From: Christensen, Damaris
Sent: Wednesday, May 03, 2017 12:51 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Final WOTUS ppt for R9 RTOC ?

Rose, I didn't see any formatting issues pop up.

Jason, you are going to walk through the powerpoint, right? Do you have any questions for us before we put you on the spot? Some slides have notes more than TPs; others have nothing.

Thanks again!

Damaris

From: Kwok, Rose
Sent: Wednesday, May 03, 2017 1:31 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Final WOTUS ppt for R9 RTOC ?

I don't think my personal computer has the font that the PPT is in - can someone check this to make sure the slides look ok? Jason - I've updated the title slide and the next steps slide to make it up-to-date. Please let the tribes know that the content in this PPT is the same as the one from April and will be the same for the webinar in May. Thanks!!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Christensen, Damaris
Sent: Wednesday, May 3, 2017 1:07:38 PM
To: Kwok, Rose; Brush, Jason
Cc: Downing, Donna
Subject: RE: Final WOTUS ppt for R9 RTOC ?

Ok will leave to you, thanks.

And I happened to be on the phone with Donna so can confirm we both are standing down. ☺

All, I know Rose is elsewhere working through some connection issues with Paul Amato. Do we need to try and schedule a meeting to do a run-through or talk through the process this afternoon or tomorrow morning with everyone from Region 9?

If so, Rose, give me an approx.. time and I can take care of setting the meeting up if you'd like. If I don't hear from you I will assume you have this under control and people from R9 are comfortable.

Damaris

From: Kwok, Rose
Sent: Wednesday, May 03, 2017 1:04 PM
To: Brush, Jason <Brush.Jason@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Final WOTUS ppt for R9 RTOC ?

Jason - this looks like an older version. I'll send you the right version momentarily. D&D - I need to make a correction from the version that is currently on SP

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Brush, Jason
Sent: Wednesday, May 3, 2017 12:47:34 PM
To: Christensen, Damaris; Kwok, Rose
Cc: Downing, Donna
Subject: Final WOTUS ppt for R9 RTOC ?

Hi guys – Can you make sure I have the final, please? Cheers - JB

Jason A. Brush
Acting Assistant Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (WTR-2)
San Francisco, CA 94105

~~~~~  
**desk: 415.972.3483**  
~~~~~

From: Louis, Gail
Sent: Wednesday, May 03, 2017 9:43 AM
To: Brush, Jason <Brush.Jason@epa.gov>
Cc: Amato, Paul <Amato.Paul@epa.gov>
Subject: FW: WOTUS Information Session at May R9 RTOC Meeting

This is the latest version I saw. We need to correct the typo (Regional Tribal Operations Committee).

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Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division
75 Hawthorne Street (WTR-3-4)
San Francisco, CA 94105
Phone: (415) 972-3467
Fax: (415) 947-3537
Email: louis.gail@epa.gov

^`.,.,.><(((^>^`.,.,.><(((^>^`.,.,.><(((^>

From: Christensen, Damaris

Sent: Monday, April 24, 2017 2:17 PM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

From: Christensen, Damaris

Sent: Monday, April 24, 2017 11:22 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

From: Christensen, Damaris

Sent: Saturday, April 22, 2017 10:56 PM

To: Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

Cc: Gude, Karen; Kwok, Rose; Wesson, Dolores

Subject: WOTUS Information Session at May R9 RTOC Meeting

When: Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW also Nonresponsive Conference Code/ Ex. 6

Hi all,

Call-in: Nonresponsive Conference Code/ Ex. 6

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is on AL till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term "navigable waters," in a manner consistent with the Scalia opinion in Rapanos v. U.S.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s Rapanos opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

OW plans to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]
From: Christensen, Damaris
Sent: Wed 5/3/2017 8:07:34 PM
Subject: RE: For quick review: updated WOTUS TPs needed by Benita asap

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

I'm copying Karen in case she wants to weigh in on how tribes will best respond to our characterization.

Thoughts?

From: Downing, Donna
Sent: Wednesday, May 03, 2017 3:16 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: updated WOTUS TPs needed by Benita asap

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| Deliberative Process / Ex. 5 |
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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Brush, Jason[Brush.Jason@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 5/3/2017 7:58:27 PM
Subject: Re: Final WOTUS ppt for R9 RTOC ?

One update to since the last webinar is that it is now officially on the OMB website that we are in interagency EO 12866 review - we should probably verbally mention that in the

presentation: <https://www.reginfo.gov/public/do/eoReviewSearch;jsessionid=6A8B2C4DDF320F71868>



Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Christensen, Damaris
Sent: Wednesday, May 3, 2017 3:50:37 PM
To: Kwok, Rose; Brush, Jason
Cc: Downing, Donna
Subject: RE: Final WOTUS ppt for R9 RTOC ?

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Deliberative Process / Ex. 5

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Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Final WOTUS ppt for R9 RTOC ?

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Wetlands Division

kwok.rose@epa.gov

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U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

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Cc: Downing, Donna
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Acting Assistant Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (WTR-2)
San Francisco, CA 94105

~~~~~  
**desk: 415.972.3483**  
~~~~~

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Subject: FW: WOTUS Information Session at May R9 RTOC Meeting

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~~~~~  
Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division  
75 Hawthorne Street (WTR-3-4)  
San Francisco, CA 94105  
Phone: (415) 972-3467  
Fax: (415) 947-3537

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Here's the DRAFT powerpoint.

WOTUS Rule FOIAs 0024704

-----Original Appointment-----

**From:** Christensen, Damaris

**Sent:** Saturday, April 22, 2017 10:56 PM

**To:** Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

**Cc:** Gude, Karen; Kwok, Rose; Wesson, Dolores

**Subject:** WOTUS Information Session at May R9 RTOC Meeting

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**Where:** DCRoomWest7129/DC-CCW-OWOW also **Nonresponsive Conference Code/ Ex. 6**

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Call-in: **Nonresponsive Conference Code/ Ex. 6**

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**To:** Ebbert, Laura <[Ebbert.Laura@epa.gov](mailto:Ebbert.Laura@epa.gov)>

**Cc:** Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>

**Subject:** Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

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Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

**Background information:**

*On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the*

*Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term "navigable waters," in a manner consistent with the Scalia opinion in Rapanos v. U.S.*

*The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia's Rapanos opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.*

OW plans to

**Deliberative Process / Ex. 5**

## **Deliberative Process / Ex. 5**

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

**To:** Kwok, Rose[Kwok.Rose@epa.gov]; Brush, Jason[Brush.Jason@epa.gov]  
**Cc:** Downing, Donna[Downing.Donna@epa.gov]  
**From:** Christensen, Damaris  
**Sent:** Wed 5/3/2017 7:50:37 PM  
**Subject:** RE: Final WOTUS ppt for R9 RTOC ?

Rose, I didn't see any formatting issues pop up.

# Deliberative Process / Ex. 5

Thanks again!

Damaris

**From:** Kwok, Rose  
**Sent:** Wednesday, May 03, 2017 1:31 PM  
**To:** Christensen, Damaris <Christensen.Damaris@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>  
**Cc:** Downing, Donna <Downing.Donna@epa.gov>  
**Subject:** Re: Final WOTUS ppt for R9 RTOC ?

I don't think my personal computer has the font that the PPT is in - can someone check this to make sure the slides look ok? Jason - I've updated the title slide and the next steps slide to make it up-to-date. Please let the tribes know that the content in this PPT is the same as the one from April and will be the same for the webinar in May. Thanks!!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)



202-566-0657, 202-566-1375 (fax)

---

**From:** Christensen, Damaris  
**Sent:** Wednesday, May 3, 2017 1:07:38 PM  
**To:** Kwok, Rose; Brush, Jason  
**Cc:** Downing, Donna  
**Subject:** RE: Final WOTUS ppt for R9 RTOC ?

Ok will leave to you, thanks.

And I happened to be on the phone with Donna so can confirm we both are standing down. ☺

All, I know Rose is elsewhere working through some connection issues with Paul Amato. Do we need to try and schedule a meeting to do a run-through or talk through the process this afternoon or tomorrow morning with everyone from Region 9?

If so, Rose, give me an approx.. time and I can take care of setting the meeting up if you'd like. If I don't hear from you I will assume you have this under control and people from R9 are comfortable.

Damaris

**From:** Kwok, Rose  
**Sent:** Wednesday, May 03, 2017 1:04 PM  
**To:** Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>; Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>  
**Cc:** Downing, Donna <[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>  
**Subject:** Re: Final WOTUS ppt for R9 RTOC ?

Jason - this looks like an older version. I'll send you the right version momentarily. D&D -

I need to make a correction from the version that is currently on SP

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Brush, Jason  
**Sent:** Wednesday, May 3, 2017 12:47:34 PM  
**To:** Christensen, Damaris; Kwok, Rose  
**Cc:** Downing, Donna  
**Subject:** Final WOTUS ppt for R9 RTOC ?

Hi guys – Can you make sure I have the final, please? Cheers - JB

**Jason A. Brush**  
**Acting Assistant Director, Water Division**  
**U.S. Environmental Protection Agency, Region 9**  
**75 Hawthorne Street (WTR-2)**  
**San Francisco, CA 94105**

~~~~~  
desk: 415.972.3483
~~~~~

**From:** Louis, Gail  
**Sent:** Wednesday, May 03, 2017 9:43 AM  
**To:** Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Cc:** Amato, Paul <[Amato.Paul@epa.gov](mailto:Amato.Paul@epa.gov)>  
**Subject:** FW: WOTUS Information Session at May R9 RTOC Meeting

This is the latest version I saw. We need to correct the typo (Regional Tribal Operations Committee).

^`.,.,.><(((^>^`.,.,.><(((^>^`.,.,.><(((^>  
Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division  
75 Hawthorne Street (WTR-3-4)  
San Francisco, CA 94105  
Phone: (415) 972-3467  
Fax: (415) 947-3537  
Email: [louis.gail@epa.gov](mailto:louis.gail@epa.gov)

^`.,.,.><(((^>^`.,.,.><(((^>^`.,.,.><(((^>

**From:** Christensen, Damaris

**Sent:** Monday, April 24, 2017 2:17 PM

**To:** Ebbert, Laura <[Ebbert.Laura@epa.gov](mailto:Ebbert.Laura@epa.gov)>; Amato, Paul <[Amato.Paul@epa.gov](mailto:Amato.Paul@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Bennett, Brittany <[bennett.brittany@epa.gov](mailto:bennett.brittany@epa.gov)>; Mojica Hernandez, Ruben <[mojica-hernandez.ruben@epa.gov](mailto:mojica-hernandez.ruben@epa.gov)>; Louis, Gail <[Louis.Gail@epa.gov](mailto:Louis.Gail@epa.gov)>

**Cc:** Gude, Karen <[Gude.Karen@epa.gov](mailto:Gude.Karen@epa.gov)>; Kwok, Rose <[Kwok.Rose@epa.gov](mailto:Kwok.Rose@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>

**Subject:** RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

**From:** Christensen, Damaris

**Sent:** Monday, April 24, 2017 11:22 AM

**To:** Ebbert, Laura <[Ebbert.Laura@epa.gov](mailto:Ebbert.Laura@epa.gov)>; Amato, Paul <[Amato.Paul@epa.gov](mailto:Amato.Paul@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Bennett, Brittany <[bennett.brittany@epa.gov](mailto:bennett.brittany@epa.gov)>; Mojica Hernandez, Ruben <[mojica-hernandez.ruben@epa.gov](mailto:mojica-hernandez.ruben@epa.gov)>; Louis, Gail <[Louis.Gail@epa.gov](mailto:Louis.Gail@epa.gov)>

**Cc:** Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>  
**Subject:** RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

**From:** Christensen, Damaris

**Sent:** Saturday, April 22, 2017 10:56 PM

**To:** Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

**Cc:** Gude, Karen; Kwok, Rose; Wesson, Dolores

**Subject:** WOTUS Information Session at May R9 RTOC Meeting

**When:** Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** DCRoomWest7129/DC-CCW-OWOW also **Nonresponsive Conference Code/ Ex. 6**

Hi all,

Call-in: **Nonresponsive Conference Code/ Ex. 6**

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is on AL till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

**From:** Gude, Karen  
**Sent:** Tuesday, April 18, 2017 7:13 AM  
**To:** Ebbert, Laura <[Ebbert.Laura@epa.gov](mailto:Ebbert.Laura@epa.gov)>  
**Cc:** Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>  
**Subject:** Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

**Background information:**

*On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term “navigable waters,” in a manner consistent with the Scalia opinion in *Rapanos v. U.S.**

*The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.*

OW plans to

**Deliberative Process / Ex. 5**

**Deliberative Process / Ex. 5**

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

**To:** Evalenko, Sandy[Evalenko.Sandy@epa.gov]  
**Cc:** Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Chancey, Barbara[Chancey.Barbara@epa.gov]  
**From:** Nelson, Tomeka  
**Sent:** Wed 5/3/2017 7:49:05 PM  
**Subject:** FW: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)  
Draft Redline EPA Agenda Entries-OMB.docx

Thanks for coordinating this Sandy.

**Deliberative Process / Ex. 5**

# Deliberative Process / Ex. 5

Many Thanks!

**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

**Room 7410J – EPA West**

**From:** Kwok, Rose  
**Sent:** Wednesday, May 03, 2017 3:37 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>  
**Cc:** Chancey, Barbara <Chancey.Barbara@epa.gov>  
**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

# Deliberative Process / Ex. 5



Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Kupchan, Simma

**Sent:** Wednesday, May 3, 2017 2:55:48 PM

**To:** Kwok, Rose; Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy; Wehling, Carrie

**Cc:** Chancey, Barbara

**Subject:** RE: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

**Deliberative Process / Ex. 5**

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

**From:** Kwok, Rose

**Sent:** Wednesday, May 03, 2017 1:51 PM

**To:** Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Downing, Donna <[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>; Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>

**Cc:** Chancey, Barbara <[Chancey.Barbara@epa.gov](mailto:Chancey.Barbara@epa.gov)>

**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

## Deliberative Process / Ex. 5

Deliberative Process / Ex. 5  
m copying Carrie and Simma here as well. Thanks

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Kwok, Rose

**Sent:** Wednesday, May 3, 2017 1:33:39 PM

**To:** Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy

**Cc:** Chancey, Barbara

**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Hi Tomeka,

## Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Nelson, Tomeka  
**Sent:** Wednesday, May 3, 2017 1:15:47 PM  
**To:** Downing, Donna; Kwok, Rose; Christensen, Damaris; Eisenberg, Mindy  
**Cc:** Chancey, Barbara  
**Subject:** ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Please take a look at the attached Reg Agenda Galley Proof and make any needed responses or edits by NOON tomorrow. Sorry for the quick turnaround, as you can see, I am just receiving the request.

## Deliberative Process / Ex. 5

Many Thanks!

**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

**Room 7410J – EPA West**

**From:** Evalenko, Sandy  
**Sent:** Wednesday, May 03, 2017 1:04 PM  
**To:** Flaharty, Stephanie <[Flaharty.Stephanie@epa.gov](mailto:Flaharty.Stephanie@epa.gov)>; Gerstein, Arielle <[gerstein.arielle@epa.gov](mailto:gerstein.arielle@epa.gov)>; Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Stebe, Katherine <[Stebe.Katherine@epa.gov](mailto:Stebe.Katherine@epa.gov)>; Schollhamer, Mary <[Schollhamer.Mary@epa.gov](mailto:Schollhamer.Mary@epa.gov)>  
**Cc:** Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Lousberg, Macara <[Lousberg.Macara@epa.gov](mailto:Lousberg.Macara@epa.gov)>; Ruf, Christine <[Ruf.Christine@epa.gov](mailto:Ruf.Christine@epa.gov)>  
**Subject:** Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Urgent due by 12:00 tomorrow to OP. Please send me comments by 11:00 am

Here's the Spring Reg Agenda Galley proofs. I will be reviewing all of OW's actions and recommend that you do to since this was done so quickly.

OW has the following comments –

## Deliberative Process / Ex. 5

**From:** Muellerleile, Caryn

**Sent:** Wednesday, May 03, 2017 10:31 AM

**To:** Farrar, Wanda <[farrar.wanda@epa.gov](mailto:farrar.wanda@epa.gov)>; Eagles, Tom <[Eagles.Tom@epa.gov](mailto:Eagles.Tom@epa.gov)>; Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Cogliano, Gerain <[Cogliano.Gerain@epa.gov](mailto:Cogliano.Gerain@epa.gov)>; Noggle, William <[Noggle.William@epa.gov](mailto:Noggle.William@epa.gov)>; Hofmann, Angela <[Hofmann.Angela@epa.gov](mailto:Hofmann.Angela@epa.gov)>; Smith, Peterj <[Smith.Peterj@epa.gov](mailto:Smith.Peterj@epa.gov)>; Fegley, Robert <[Fegley.Robert@epa.gov](mailto:Fegley.Robert@epa.gov)>; Williams, Pat <[Williams.Pat@epa.gov](mailto:Williams.Pat@epa.gov)>

**Cc:** Owens, Nicole <[Owens.Nicole@epa.gov](mailto:Owens.Nicole@epa.gov)>; Curry, Bridgid <[Curry.Bridgid@epa.gov](mailto:Curry.Bridgid@epa.gov)>; Jutras, Nathaniel <[Jutras.Nathaniel@epa.gov](mailto:Jutras.Nathaniel@epa.gov)>

**Subject:** Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

**Importance:** High

We did not receive comments on the FY17 and FY18 regulatory/deregulatory cost spreadsheets. See attached for (few) comments on the Agenda itself. Note below which agenda entries (not page

numbers) your office should review.

**Deliberative Process / Ex. 5**

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

[muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov)

**To:** Nelson, Tomeka[Nelson.Tomeka@epa.gov]  
**Cc:** Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]  
**From:** Evalenko, Sandy  
**Sent:** Wed 5/3/2017 7:34:34 PM  
**Subject:** Re: Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Thanks!

Sent from my iPhone

On May 3, 2017, at 3:21 PM, Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)> wrote:

## Deliberative Process / Ex. 5

Many Thanks!

**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

**Room 7410J – EPA West**

**From:** Evalenko, Sandy  
**Sent:** Wednesday, May 03, 2017 3:19 PM  
**To:** Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>  
**Cc:** Downing, Donna <[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>; Kwok, Rose <[Kwok.Rose@epa.gov](mailto:Kwok.Rose@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>  
**Subject:** Re: Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Please let them know that OW's edits are due to OP's by 12:00. I don't think I have much wiggle room.

Thanks

Sandy

Sent from my iPhone

On May 3, 2017, at 3:13 PM, Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)> wrote:

Thanks Sandy, I have already forwarded your email to Donna and Rose and they are working on it. They have Carrie and Simma reviewing the abstract as we speak.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Again, waiting to hear from OGC on additional changes.

Just an FYI, I gave them the noon deadline per your original email. Though, we hope to have something to you before then.

Many Thanks!

**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

**Room 7410J – EPA West**

**From:** Evalenko, Sandy

**Sent:** Wednesday, May 03, 2017 2:43 PM

**To:** Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Downing, Donna <[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>; Kwok, Rose <[Kwok.Rose@epa.gov](mailto:Kwok.Rose@epa.gov)>

**Subject:** Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Tomeka – I just saw your email and hope that you're doing well. I'm forwarding this email to Donna and Rose since the timeframe is so short.

Donna/Rose: Any comments/responses to OMB's questions or other changes to the Spring Reg Agenda information are due no later than 11am tomorrow.

## Deliberative Process / Ex. 5

Thanks,

Sandy

**From:** Evalenko, Sandy

**Sent:** Wednesday, May 03, 2017 1:04 PM

**To:** Flaharty, Stephanie <[Flaharty.Stephanie@epa.gov](mailto:Flaharty.Stephanie@epa.gov)>; Gerstein, Arielle <[gerstein.arielle@epa.gov](mailto:gerstein.arielle@epa.gov)>; Tomeka Nelson <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Stebe, Katherine <[Stebe.Katherine@epa.gov](mailto:Stebe.Katherine@epa.gov)>; Schollhamer, Mary <[Schollhamer.Mary@epa.gov](mailto:Schollhamer.Mary@epa.gov)>

**Cc:** Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Lousberg, Macara <[Lousberg.Macara@epa.gov](mailto:Lousberg.Macara@epa.gov)>; Ruf, Christine <[Ruf.Christine@epa.gov](mailto:Ruf.Christine@epa.gov)>

**Subject:** Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Urgent due by 12:00 tomorrow to OP. Please send me comments by 11:00 am

Here's the Spring Reg Agenda Galley proofs. I will be reviewing all of OW's actions and recommend that you do to since this was done so quickly.

OW has the following comments –

## Deliberative Process / Ex. 5



## Deliberative Process / Ex. 5

**From:** Muellerleile, Caryn

**Sent:** Wednesday, May 03, 2017 10:31 AM

**To:** Farrar, Wanda <[farrar.wanda@epa.gov](mailto:farrar.wanda@epa.gov)>; Eagles, Tom <[Eagles.Tom@epa.gov](mailto:Eagles.Tom@epa.gov)>; Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Cogliano, Gerain <[Cogliano.Gerain@epa.gov](mailto:Cogliano.Gerain@epa.gov)>; Noggle, William <[Noggle.William@epa.gov](mailto:Noggle.William@epa.gov)>; Hofmann, Angela <[Hofmann.Angela@epa.gov](mailto:Hofmann.Angela@epa.gov)>; Smith, Peterj <[Smith.Peterj@epa.gov](mailto:Smith.Peterj@epa.gov)>; Fegley, Robert <[Fegley.Robert@epa.gov](mailto:Fegley.Robert@epa.gov)>; Williams, Pat <[Williams.Pat@epa.gov](mailto:Williams.Pat@epa.gov)>

**Cc:** Owens, Nicole <[Owens.Nicole@epa.gov](mailto:Owens.Nicole@epa.gov)>; Curry, Bridgid <[Curry.Bridgid@epa.gov](mailto:Curry.Bridgid@epa.gov)>; Jutras, Nathaniel <[Jutras.Nathaniel@epa.gov](mailto:Jutras.Nathaniel@epa.gov)>

**Subject:** Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

**Importance:** High

We did not receive comments on the FY17 and FY18 regulatory/deregulatory cost spreadsheets. See attached for (few) comments on the Agenda itself. Note below which agenda entries (not page numbers) your office should review.

## Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

[muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov)

<Draft Redline EPA Agenda Entries-OMB.DOCX>

**To:** Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]  
**From:** Kwok, Rose  
**Sent:** Wed 5/3/2017 7:33:55 PM  
**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

## Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Christensen, Damaris  
**Sent:** Wednesday, May 3, 2017 3:32:32 PM  
**To:** Eisenberg, Mindy; Kwok, Rose; Downing, Donna  
**Subject:** RE: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

## Deliberative Process / Ex. 5

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Damaris

**From:** Eisenberg, Mindy  
**Sent:** Wednesday, May 03, 2017 3:25 PM  
**To:** Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>  
**Subject:** RE: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

## Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

[eisenberg.mindy@epa.gov](mailto:eisenberg.mindy@epa.gov)

**From:** Kwok, Rose

**Sent:** Wednesday, May 03, 2017 1:51 PM

**To:** Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Downing, Donna  
<[Downing.Donna@epa.gov](mailto:Downing.Donna@epa.gov)>; Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>;  
Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>;  
Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>

**Cc:** Chancey, Barbara <[Chancey.Barbara@epa.gov](mailto:Chancey.Barbara@epa.gov)>

**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

**Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

and Simma here as well. Thanks

I'm copying Carrie

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Kwok, Rose  
**Sent:** Wednesday, May 3, 2017 1:33:39 PM  
**To:** Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy  
**Cc:** Chancey, Barbara  
**Subject:** Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Hi Tomeka,

## Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Nelson, Tomeka  
**Sent:** Wednesday, May 3, 2017 1:15:47 PM  
**To:** Downing, Donna; Kwok, Rose; Christensen, Damaris; Eisenberg, Mindy  
**Cc:** Chancey, Barbara  
**Subject:** ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

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## Deliberative Process / Ex. 5

Many Thanks!

**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

**Room 7410J – EPA West**

**From:** Evalenko, Sandy

**Sent:** Wednesday, May 03, 2017 1:04 PM

**To:** Flaharty, Stephanie <[Flaharty.Stephanie@epa.gov](mailto:Flaharty.Stephanie@epa.gov)>; Gerstein, Arielle <[gerstein.arielle@epa.gov](mailto:gerstein.arielle@epa.gov)>; Nelson, Tomeka <[Nelson.Tomeka@epa.gov](mailto:Nelson.Tomeka@epa.gov)>; Stebe, Katherine <[Stebe.Katherine@epa.gov](mailto:Stebe.Katherine@epa.gov)>; Schollhamer, Mary <[Schollhamer.Mary@epa.gov](mailto:Schollhamer.Mary@epa.gov)>

**Cc:** Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Lousberg, Macara <[Lousberg.Macara@epa.gov](mailto:Lousberg.Macara@epa.gov)>; Ruf, Christine <[Ruf.Christine@epa.gov](mailto:Ruf.Christine@epa.gov)>

**Subject:** Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Urgent due by 12:00 tomorrow to OP. Please send me comments by 11:00 am

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OW has the following comments –

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## Deliberative Process / Ex. 5

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**Cc:** Owens, Nicole <[Owens.Nicole@epa.gov](mailto:Owens.Nicole@epa.gov)>; Curry, Bridgid <[Curry.Bridgid@epa.gov](mailto:Curry.Bridgid@epa.gov)>; Jutras, Nathaniel <[Jutras.Nathaniel@epa.gov](mailto:Jutras.Nathaniel@epa.gov)>

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(202) 564-2855

[muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov)



**To:** Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]  
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Mindy Eisenberg

Acting Director, Wetlands Division

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Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

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U.S. Environmental Protection Agency

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202-566-0657, 202-566-1375 (fax)

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**Cc:** Chancey, Barbara

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**Tomeka Nelson**

**Office of Wetlands, Oceans & Watersheds**

**202-566-1291**

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**Cc:** Evalenko, Sandy <[Evalenko.Sandy@epa.gov](mailto:Evalenko.Sandy@epa.gov)>; Lousberg, Macara <[Lousberg.Macara@epa.gov](mailto:Lousberg.Macara@epa.gov)>; Ruf, Christine <[Ruf.Christine@epa.gov](mailto:Ruf.Christine@epa.gov)>

**Subject:** Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

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<[Williams.Pat@epa.gov](mailto:Williams.Pat@epa.gov)>

**Cc:** Owens, Nicole <[Owens.Nicole@epa.gov](mailto:Owens.Nicole@epa.gov)>; Curry, Bridgid <[Curry.Bridgid@epa.gov](mailto:Curry.Bridgid@epa.gov)>;  
Jutras, Nathaniel <[Jutras.Nathaniel@epa.gov](mailto:Jutras.Nathaniel@epa.gov)>

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Caryn Muellerleile

Regulatory Management Division

Office of Policy

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Washington, DC 20460

(202) 564-2855

[muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov)

**To:** Christensen, Damaris[Christensen.Damaris@epa.gov]; Brush, Jason[Brush.Jason@epa.gov]  
**Cc:** Downing, Donna[Downing.Donna@epa.gov]  
**From:** Kwok, Rose  
**Sent:** Wed 5/3/2017 7:27:20 PM  
**Subject:** Re: Final WOTUS ppt for R9 RTOC ?

I just spoke to Paul. Jason was able to get in no problem, and Paul and I will test things out 15 minute prior to the start of the webinar tomorrow. So I think we are good on that front! Thanks!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Kwok, Rose  
**Sent:** Wednesday, May 3, 2017 1:31:18 PM  
**To:** Christensen, Damaris; Brush, Jason  
**Cc:** Downing, Donna  
**Subject:** Re: Final WOTUS ppt for R9 RTOC ?

I don't think my personal computer has the font that the PPT is in - can someone check this to make sure the slides look ok? Jason - I've updated the title slide and the next steps slide to make it up-to-date. Please let the tribes know that the content in this PPT is the same as the one from April and will be the same for the webinar in May. Thanks!!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Christensen, Damaris  
**Sent:** Wednesday, May 3, 2017 1:07:38 PM  
**To:** Kwok, Rose; Brush, Jason  
**Cc:** Downing, Donna  
**Subject:** RE: Final WOTUS ppt for R9 RTOC ?

Ok will leave to you, thanks.

And I happened to be on the phone with Donna so can confirm we both are standing down. ☺

All, I know Rose is elsewhere working through some connection issues with Paul Amato. Do we need to try and schedule a meeting to do a run-through or talk through the process this afternoon or tomorrow morning with everyone from Region 9?

If so, Rose, give me an approx.. time and I can take care of setting the meeting up if you'd like. If I don't hear from you I will assume you have this under control and people from R9 are comfortable.

Damaris

**From:** Kwok, Rose  
**Sent:** Wednesday, May 03, 2017 1:04 PM  
**To:** Brush, Jason <Brush.Jason@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>  
**Cc:** Downing, Donna <Downing.Donna@epa.gov>  
**Subject:** Re: Final WOTUS ppt for R9 RTOC ?

Jason - this looks like an older version. I'll send you the right version momentarily. D&D - I need to make a correction from the version that is currently on SP

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

[kwok.rose@epa.gov](mailto:kwok.rose@epa.gov)

202-566-0657, 202-566-1375 (fax)

---

**From:** Brush, Jason  
**Sent:** Wednesday, May 3, 2017 12:47:34 PM  
**To:** Christensen, Damaris; Kwok, Rose  
**Cc:** Downing, Donna  
**Subject:** Final WOTUS ppt for R9 RTOC ?

Hi guys – Can you make sure I have the final, please? Cheers - JB

**Jason A. Brush**  
**Acting Assistant Director, Water Division**  
**U.S. Environmental Protection Agency, Region 9**  
**75 Hawthorne Street (WTR-2)**  
**San Francisco, CA 94105**

~~~~~  
desk: 415.972.3483
~~~~~

**From:** Louis, Gail  
**Sent:** Wednesday, May 03, 2017 9:43 AM  
**To:** Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Cc:** Amato, Paul <[Amato.Paul@epa.gov](mailto:Amato.Paul@epa.gov)>  
**Subject:** FW: WOTUS Information Session at May R9 RTOC Meeting

This is the latest version I saw. We need to correct the typo (Regional Tribal Operations Committee).

~~~~~  
Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division

75 Hawthorne Street (WTR-3-4)

San Francisco, CA 94105

Phone: (415) 972-3467

Fax: (415) 947-3537

Email: louis.gail@epa.gov

^`.,.,.><(((^>^`.,.,.><(((^>^`.,.,.><(((^>

From: Christensen, Damaris

Sent: Monday, April 24, 2017 2:17 PM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

From: Christensen, Damaris

Sent: Monday, April 24, 2017 11:22 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

From: Christensen, Damaris

Sent: Saturday, April 22, 2017 10:56 PM

To: Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

Cc: Gude, Karen; Kwok, Rose; Wesson, Dolores

Subject: WOTUS Information Session at May R9 RTOC Meeting

When: Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW also **Nonresponsive Conference Code/ Ex. 6**

Hi all,

Call-in: **Nonresponsive Conference Code/ Ex. 6**

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is on AL till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

On February 28, the President issued an Executive Order on "Restoring the Rule of Law,

Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term "navigable waters," in a manner consistent with the Scalia opinion in Rapanos v. U.S.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s Rapanos opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

OW plans to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Evalenko, Sandy
Sent: Wed 5/3/2017 7:25:20 PM
Subject: Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

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Sent from my iPhone

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Thanks!

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>

>

> Rose Kwok

>

> U.S. Environmental Protection Agency

>

> Wetlands Division

>

> kwok.rose@epa.gov<mailto:kwok.rose@epa.gov>

>

> 202-566-0657, 202-566-1375 (fax)

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> Sent: Wednesday, May 3, 2017 1:33:39 PM

> To: Nelson, Tomeka; Downing, Donna; Christensen, Damaris; Eisenberg, Mindy

> Cc: Chancey, Barbara

> Subject: Re: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

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> Hi Tomeka,

WOTUS Rule FOIAs 0024746

Deliberative Process / Ex. 5

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> Sent: Wednesday, May 03, 2017 10:31 AM
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<Smith.Peterj@epa.gov<<mailto:Smith.Peterj@epa.gov>>>; Fegley, Robert
<Fegley.Robert@epa.gov<<mailto:Fegley.Robert@epa.gov>>>; Williams, Pat
<Williams.Pat@epa.gov<<mailto:Williams.Pat@epa.gov>>>
> Cc: Owens, Nicole <Owens.Nicole@epa.gov<<mailto:Owens.Nicole@epa.gov>>>; Curry, Bridgid
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- > Caryn Muellerleile
- > Regulatory Management Division
- > Office of Policy
- > US Environmental Protection Agency
- > 1200 Pennsylvania Ave NW (1803A)
- > Washington, DC 20460
- > (202) 564-2855
- > muellerleile.caryn@epa.gov<mailto:muellerleile.caryn@epa.gov>
- >
- > <Draft Redline EPA Agenda Entries-OMB.docx>

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Cc: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
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Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

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Room 7410J – EPA West

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Sent: Wed 5/3/2017 7:03:42 PM
Subject: Fwd: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)
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[ATT00001.htm](#)

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Deliberative Process / Ex. 5



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Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

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Office of Wetlands, Oceans & Watersheds

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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Brush, Jason[Brush.Jason@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 5/3/2017 5:31:18 PM
Subject: Re: Final WOTUS ppt for R9 RTOC ?
WOTUS2 tribal info and consultation - RTOC.pptx

I don't think my personal computer has the font that the PPT is in - can someone check this to make sure the slides look ok? Jason - I've updated the title slide and the next steps slide to make it up-to-date. Please let the tribes know that the content in this PPT is the same as the one from April and will be the same for the webinar in May. Thanks!!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Christensen, Damaris
Sent: Wednesday, May 3, 2017 1:07:38 PM
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Cc: Downing, Donna
Subject: RE: Final WOTUS ppt for R9 RTOC ?

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And I happened to be on the phone with Donna so can confirm we both are standing down. ☺

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Jason A. Brush
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San Francisco, CA 94105

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**desk: 415.972.3483**  
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Gail Louis, Manager

Tribal Water Section

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75 Hawthorne Street (WTR-3-4)  
San Francisco, CA 94105  
Phone: (415) 972-3467  
Fax: (415) 947-3537  
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Subject: WOTUS Information Session at May R9 RTOC Meeting
When: Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW also

Nonresponsive Conference Code/ Ex. 6

Hi all,

Call-in: **Nonresponsive Conference Code/ Ex. 6**

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is on AL till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

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Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

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Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and

coordination on a forthcoming proposal to rescind and then revise the definition of “waters of the United States.” (Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

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Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

*On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term “navigable waters,” in a manner consistent with the Scalia opinion in *Rapanos v. U.S.**

*The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.*

OW plans to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Chancey, Barbara[Chancey.Barbara@epa.gov]
From: Nelson, Tomeka
Sent: Wed 5/3/2017 5:15:47 PM
Subject: ACTION URGENT - Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)
[Draft Redline EPA Agenda Entries-OMB.docx](#)

Please take a look at the attached Reg Agenda Galley Proof and make any needed responses or edits by NOON tomorrow. Sorry for the quick turnaround, as you can see, I am just receiving the request.

Deliberative Process / Ex. 5

Many Thanks!

Tomeka Nelson

Office of Wetlands, Oceans & Watersheds

202-566-1291

Room 7410J – EPA West

From: Evalenko, Sandy
Sent: Wednesday, May 03, 2017 1:04 PM
To: Flaharty, Stephanie <Flaharty.Stephanie@epa.gov>; Gerstein, Arielle <gerstein.arielle@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Stebe, Katherine <Stebe.Katherine@epa.gov>; Schollhamer, Mary <Schollhamer.Mary@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: Urgent- Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Urgent due by 12:00 tomorrow to OP. Please send me comments by 11:00 am

Here's the Spring Reg Agenda Galley proofs. I will be reviewing all of OW's actions and recommend that you do to since this was done so quickly.

OW has the following comments –

Deliberative Process / Ex. 5

From: Muellerleile, Caryn

Sent: Wednesday, May 03, 2017 10:31 AM

To: Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Fegley, Robert <Fegley.Robert@epa.gov>; Williams, Pat <Williams.Pat@epa.gov>

Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>

Subject: Reg Agenda review from OMB - fast turnaround (responses and other edits due NOON Thurs 5/4)

Importance: High

We did not receive comments on the FY17 and FY18 regulatory/deregulatory cost spreadsheets. See attached for (few) comments on the Agenda itself. Note below which agenda entries (not page numbers) your office should review.

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

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OW plans to

**Deliberative Process / Ex. 5**

# **Deliberative Process / Ex. 5**

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831



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**Sent:** Saturday, April 22, 2017 10:56 PM

**To:** Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

**Cc:** Gude, Karen; Kwok, Rose; Wesson, Dolores

**Subject:** WOTUS Information Session at May R9 RTOC Meeting

**When:** Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** DCRoomWest7129/DC-CCW-OWOW also

**Nonresponsive Conference Code/ Ex. 6**

Hi all,

Call-in: **Nonresponsive Conference Code/ Ex. 6**

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is on AL till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below

initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

**From:** Gude, Karen

**Sent:** Tuesday, April 18, 2017 7:13 AM

**To:** Ebbert, Laura <[Ebbert.Laura@epa.gov](mailto:Ebbert.Laura@epa.gov)>

**Cc:** Christensen, Damaris <[Christensen.Damaris@epa.gov](mailto:Christensen.Damaris@epa.gov)>; Wesson, Dolores <[Wesson.Dolores@epa.gov](mailto:Wesson.Dolores@epa.gov)>

**Subject:** Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this



action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

**Background information:**

*On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term “navigable waters,” in a manner consistent with the Scalia opinion in *Rapanos v. U.S.**

*The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.*

OW plans to

Deliberative Process / Ex. 5

**Deliberative Process / Ex. 5**

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

**To:** Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]  
**Cc:** Downing, Donna[Downing.Donna@epa.gov]  
**From:** Brush, Jason  
**Sent:** Wed 5/3/2017 4:47:34 PM  
**Subject:** Final WOTUS ppt for R9 RTOC ?  
WOTUS2 tribal info and consultation.pptx

Hi guys – Can you make sure I have the final, please? Cheers - JB

**Jason A. Brush**  
**Acting Assistant Director, Water Division**  
**U.S. Environmental Protection Agency, Region 9**  
**75 Hawthorne Street (WTR-2)**  
**San Francisco, CA 94105**

~~~~~  
desk: 415.972.3483
~~~~~

**From:** Louis, Gail  
**Sent:** Wednesday, May 03, 2017 9:43 AM  
**To:** Brush, Jason <Brush.Jason@epa.gov>  
**Cc:** Amato, Paul <Amato.Paul@epa.gov>  
**Subject:** FW: WOTUS Information Session at May R9 RTOC Meeting

This is the latest version I saw. We need to correct the typo (Regional Tribal Operations Committee).

~~~~~  
Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division
75 Hawthorne Street (WTR-3-4)
San Francisco, CA 94105
Phone: (415) 972-3467
Fax: (415) 947-3537
Email: louis.gail@epa.gov

From: Christensen, Damaris
Sent: Monday, April 24, 2017 2:17 PM
To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

From: Christensen, Damaris
Sent: Monday, April 24, 2017 11:22 AM
To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

From: Christensen, Damaris

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OW plans to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]
Cc: Muellerleile, Caryn[Muellerleile.Caryn@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Nurse, Leanne
Sent: Wed 5/3/2017 3:32:50 PM
Subject: RE: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

Yes, will do.

From: Evalenko, Sandy
Sent: Wednesday, May 03, 2017 11:27 AM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>
Cc: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Evalenko, Sandy
Sent: Wednesday, May 03, 2017 10:50 AM
To: Nurse, Leanne <Nurse.Leanne@epa.gov>
Cc: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Fwd: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

Leanne: will you please let us know if the OP OFR staff will be able to re ire this FRN for OFR purposes? **Deliberative Process / Ex. 5** Rose Kwok
and Donna Downing are the rule writers.

Thanks,

Sandy

Sent from my iPhone

Begin forwarded message:

From: "Evalenko, Sandy" <Evalenko.Sandy@epa.gov>
To: "Muellerleile, Caryn" <Muellerleile.Caryn@epa.gov>, "Nurse, Leanne" <Nurse.Leanne@epa.gov>, "Nathaniel Jutras" <Jutras.Nathaniel@epa.gov>
Cc: "Ann Campbell" <Campbell.Ann@epa.gov>, "Lousberg, Macara" <Lousberg.Macara@epa.gov>, "Donna Downing" <Downing.Donna@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Nicole Owens" <Owens.Nicole@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>
Subject: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

All: Attached is the Definition of "Waters of the U.S." – Recodification of Preexisting Rules SAN: 6027 | RIN: 2040-AF74 (Tier 1 Rule). Mike Shapiro's transmittal memo is attached and OGC concurrence is below. Please send an email to all on the cc list when this is sent to OMB. OWOW will send notice to the Army Corps of Engineers when the rule is sent to OMB.

Sandy

*Sandy Evalenko
Water Policy Staff
Office of Water (4101M)
3226K WJC East
(202) 564-0264 telephone*

From: Wehling, Carrie
Sent: Friday, April 28, 2017 2:50 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

OGC concurs in the publication of this proposal.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Friday, April 28, 2017 2:21 PM

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Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Deliberative Process / Ex. 5

I've asked Sandy to email Mindy, Rose, and me when the package has been uploaded to OMB, so that we can let our whole interagency team know. In addition, Mindy plans to forward the package to our Army and Corps colleagues this afternoon as soon as she's out of a meeting.

Thanks, all! This is a good milestone.

All the best,

Donna

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Sent: Friday, April 28, 2017 1:55 PM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>
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Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

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From: Evalenko, Sandy
Sent: Wed 5/3/2017 3:27:07 PM
Subject: RE: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

Deliberative Process / Ex. 5

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Office of Wetlands, Oceans & Watersheds

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From: Evalenko, Sandy
Sent: Wed 5/3/2017 2:49:43 PM
Subject: Fwd: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)
[EO12866 WOTUS 2040-AF74 NPRM FRN 20170428.docx](#)
[ATT00001.htm](#)
[Signed OWOW to AAA transmittal.pdf](#)
[ATT00002.htm](#)
[OMB Review Memo Transmittal AAA To OP Step 1 WOTUS.DOCX](#)
[ATT00003.htm](#)
[WOTUS.NPRM.Step1.2017-04-28.pdf](#)
[ATT00004.htm](#)

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From: "Evalenko, Sandy" <Evalenko.Sandy@epa.gov>
To: "Muellerleile, Caryn" <Muellerleile.Caryn@epa.gov>, "Nurse, Leanne" <Nurse.Leanne@epa.gov>, "Nathaniel Jutras" <Jutras.Nathaniel@epa.gov>
Cc: "Ann Campbell" <Campbell.Ann@epa.gov>, "Lousberg, Macara" <Lousberg.Macara@epa.gov>, "Donna Downing" <Downing.Donna@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Nicole Owens" <Owens.Nicole@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>
Subject: Action Please: Request for OMB Review- NPRM step 1 WOTUS rule for OMB review (SAN 5027)

All: Attached is the Definition of "Waters of the U.S." – Recodification of Preexisting Rules SAN: 6027 | RIN: 2040-AF74 (Tier 1 Rule). Mike Shapiro's transmittal memo is attached and OGC concurrence is below. Please send an email to all on the cc list when this is sent to OMB. OWOW will send notice to the Army Corps of Engineers when the rule is sent to OMB.

Sandy

*Sandy Evalenko
Water Policy Staff
Office of Water (4101M)
3226K WJC East
(202) 564-0264 telephone*

From: Wehling, Carrie
Sent: Friday, April 28, 2017 2:50 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

OGC concurs in the publication of this proposal.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna

Sent: Friday, April 28, 2017 2:21 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

Hi Carrie (with a cc to other OGC and OW members of the interagency team) –

Deliberative Process / Ex. 5

I've asked Sandy to email Mindy, Rose, and me when the package has been uploaded to OMB, so that we can let our whole interagency team know. In addition, Mindy plans to forward the package to our Army and Corps colleagues this afternoon as soon as she's out of a meeting.

Thanks, all! This is a good milestone.

All the best,

Donna

From: Downing, Donna

Sent: Friday, April 28, 2017 1:55 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>

Subject: For review & processing: draft proposed step 1 WOTUS rule for OMB review

Hi Sandy:

Attached please find the package “Proposed Request for Public Comments on the Definition of Waters of the United States – Recodification of Preexisting Rules,” ready for OMB interagency review. The attachments include:

- [REDACTED] The draft proposal (preamble and rule text)
- [REDACTED] A .pdf of John Goodin’s signed transmittal of the package to Mike Shapiro
- [REDACTED] A Word transmittal memo for Mike’s transmitting the package to OP’s Samantha Davis.

Based on our conversation, I understand these three documents are sufficient for you to oversee OW’s review and transmission of the package to OP for subsequent uploading to OMB. In addition, I am bringing a hardcopy of the three documents over as soon as I push “send” on this email. Please let me know if there’s anything additional you need.

Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Tue 5/2/2017 7:12:22 PM
Subject: RE: Agenda -- WOTUS 03 May 2017.docx

Deliberative Process / Ex. 5

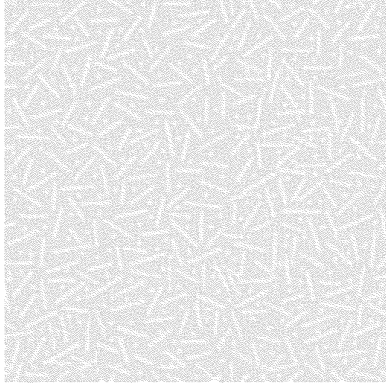
Thanks

John

From: Christensen, Damaris
Sent: Tuesday, May 02, 2017 2:59 PM
To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Agenda -- WOTUS 03 May 2017.docx

Thoughts?

To: Downing, Donna[Downing.Donna@epa.gov]
From: Johnson, Terri
Sent: Tue 5/2/2017 1:27:20 PM
Subject: FW: talking points for Benita
[draft Basic Talking Points.docx](#)



Donna, I provided the TPs above to Benita last week and told her I would get her any changes you recommend later this week. She is speaking Monday at an Urban Waters meeting in Grand Rapids associated with River Rally.

I think she wants to let John talk about the rule changes and may have some ideas about what should be said but if you think there are any changes to the attached TPs that I should forward to them please let me know before COB Thru.

Terri

From: Downing, Donna
Sent: Thursday, April 13, 2017 5:53 PM
To: Johnson, Terri <Johnson.Terri@epa.gov>
Subject: RE: talking points for Benita

Hi Terri:

Yeah, we're pretty busy but I did remember your request. I hadn't sent any TPs because the

Deliberative Process / Ex. 5

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With that warning, attached please find the current set of talking points. Let's touch base closer to Rally time to make sure the TPs reflect the then-latest public position.

Thanks!

Donna

From: Johnson, Terri
Sent: Thursday, April 13, 2017 4:23 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: talking points for Benita

I know you must be crazy busy but if you have a chance to forward the talking points you mentioned for the CWA rule it would help me as I develop talking points for Benita and John

I need to get the first draft off to Surabhi Shah for review then they go to Benita for the briefing.

From: Johnson, Terri
Sent: Wednesday, April 05, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: talking points for Benita

Rally is May 8th – 11th and she will be talking to NGOs, our regions and other Feds.

Thanks Donna

Terri Johnson

EPA- Office of Water

Urban Waters Program

202-564-8296

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Tue 5/2/2017 4:21:02 AM
Subject: agendas and things to discuss
[interagency agenda WOTUS 02 May 2017.docx](#)
[Agenda -- WOTUS 03 May 2017.docx](#)
[wotus2 governors letter.docx](#)

I've attached two draft agendas. I couldn't find a model for a Tuesday agenda so just adapted from Wednesdays.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Bennett, Brittany
Sent: Mon 5/1/2017 8:56:14 PM
Subject: Re: update on web stuff

Deliberative Process / Ex. 5

Thanks, Damaris.

B

From: Christensen, Damaris
Sent: Monday, May 1, 2017 4:23:20 PM
To: Eisenberg, Mindy
Cc: Bennett, Brittany; Kwok, Rose; Downing, Donna
Subject: update on web stuff

So I've just chatted with Mindy and talked with Brittany earlier.

1. We need to move forward and get some time on Liz's calendar to show her the "old" site and discuss a new site by Wednesday or at latest Thursday.
2. I'm going to write an email to Latosha about this morning's meeting and the feedback we got from Liz and Sarah, and latosha's ensuing conversations with OWC. I'll copy all y'all.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Damaris

From Rose (alternate suggestions):

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Thomas, Latosha[Thomas.Latosha@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Sheeler, Antonio[Sheeler.Antonio@epa.gov]
From: Christensen, Damaris
Sent: Mon 5/1/2017 8:39:10 PM
Subject: WOTUS website

Hi, Latosha.

I wanted to touch base with you on a couple things.

First, the web. Mindy told me that you two had talked after our meeting today and

Deliberative Process / Ex. 5

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As I understand the direction today,

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Second, overall outreach. Especially with you heading out on vacation next week, I'd like to touch base with you and some other folk here about what you can and can't manage in terms of your roles in the outreach and communications efforts on WOTUS2 (as we assume it is impossible for you to be both Sonia and Travis on this) – so we want to make sure we aren't duplicating effort but are also covering everything that needs to be covered. I assume your calendar is up to date, but who else from the front office should we invite to a meeting?

Thanks! Look forward to talking soon.

Damaris

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Mon 5/1/2017 8:23:20 PM
Subject: update on web stuff

So I've just chatted with Mindy and talked with Brittany earlier.

1. We need to move forward and get some time on Liz's calendar to show her the "old" site and discuss a new site by Wednesday or at latest Thursday.
2. I'm going to write an email to Latosha about this morning's meeting and the feedback we got from Liz and Sarah, and latosha's ensuing conversations with OWC. I'll copy all y'all.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Damaris

From Rose (alternate suggestions):

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Gude, Karen
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 3:00 PM-4:00 PM.

Recipients

Gude, Karen

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Gude, Karen

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 9 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Gude, Karen

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]
Cc: Jones-Coleman, Diane[Jones-Coleman.Diane@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Fields, Wanda
Sent: Mon 5/1/2017 5:11:05 PM
Subject: RE: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

Thanks Sandy. This package was signed and on my chair this morning when I got in. I have forwarded the CMS file to OEX.

From: Evalenko, Sandy
Sent: Monday, May 01, 2017 12:10 PM
To: Fields, Wanda <Fields.Wanda@epa.gov>
Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

Wanda: I just realized that I may have forgotten to forward these files to you and Diane. These are the files for the

Sandy

From: Downing, Donna
Sent: Friday, April 28, 2017 2:21 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

Hi Carrie (with a cc to other OGC and OW members of the interagency team) –

Attached is the Step 1 package that I just sent to OW's rulemaking process specialist, Sandy Evalenko. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I've asked Sandy to email Mindy, Rose, and me when the package has been uploaded to OMB, so that we can let our whole interagency team know. In addition, Mindy plans to forward the package to our Army and Corps colleagues this afternoon as soon as she's out of a meeting.

Thanks, all! This is a good milestone.

All the best,

Donna

From: Downing, Donna

Sent: Friday, April 28, 2017 1:55 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>

Subject: For review & processing: draft proposed step 1 WOTUS rule for OMB review

Hi Sandy:

Attached please find the package "Proposed Request for Public Comments on the Definition of Waters of the United States – Recodification of Preexisting Rules," ready for OMB interagency review. The attachments include:

- The draft proposal (preamble and rule text)
- A .pdf of John Goodin's signed transmittal of the package to Mike Shapiro
- A Word transmittal memo for Mike's transmitting the package to OP's Samantha Davis.

Based on our conversation, I understand these three documents are sufficient for you to oversee OW's review and transmission of the package to OP for subsequent uploading to OMB. In addition, I am bringing a hardcopy of the three documents over as soon as I push "send" on this email. Please let me know if there's anything additional you need.

Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Peterson, Carol[Peterson.Carol@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Thomas, Latosha[Thomas.Latosha@epa.gov]; Jennifer Moyer[Jennifer.A.Moyer@usace.army.mil]; Stacey Jensen[Stacey.M.Jensen@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]
From: Eisenberg, Mindy
Sent: Mon 5/1/2017 4:56:21 PM
Subject: EPA's Local Gov't Advisory Committee and WOTUS
[LGAC-WOTUS-DraftCharge-05-01-.docx](#)
[WaterWG-AGENDA-May3-2017.pdf](#)

Hi All,

As flagged in our proposed outreach strategy, EPA's local gov't FACA is interested in providing advice to the agency on our step 2 rule, similar to what they did for the CWR. There is a webinar that John will be speaking on this Wednesday and we've flagged for Sarah G. Here is the latest version of their charge (which I commented on) and agenda.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Eargle, Frances
Sent: Monday, May 01, 2017 10:28 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Goodin, John <Goodin.John@epa.gov>
Subject: RE: Email note to Goodin

Mindy,

Deliberative Process / Ex. 5

Also, here is the Water Workgroup's agenda. Let us know if there are any changes.

Thanks,

Fran

From: Eisenberg, Mindy
Sent: Friday, April 28, 2017 5:37 PM
To: Eargle, Frances <Eargle.Frances@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Email note to Goodin

Hi Fran,

Here are some suggested edits to the charge. Please let John and me know if you are comfortable.

Ann – for awareness by Mike. We may want to speak to this during the 10:00 with Sarah on Monday as part of our overall outreach discussion.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Eargle, Frances

Sent: Friday, April 28, 2017 1:29 PM

To: Goodin, John <Goodin.John@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>

Subject: Re: Email note to Goodin

Thanks John!

Sent from my iPhone

On Apr 28, 2017, at 11:24 AM, Goodin, John <Goodin.John@epa.gov> wrote:

Thanks, Fran. Jack and I were able to chat last night, and I have blocked off that time on my calendar to participate. I'll take a look at the charge shortly and loop back re: whether it makes sense to have Mike or Sarah take a look at it as well.

Thanks

John

From: Eargle, Frances

Sent: Friday, April 28, 2017 10:04 AM

To: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>

Subject: FW: Email note to Goodin

John,

Will you or someone from OWOW be able to present WOTUS for the **LGAC Water Workgroup on May 3rd, 4:30-5:30 ET (teleconference)**. The Executive Committee met on Wednesday and they are moving forward with engaging the committee on Regulatory Reform and WOTUS.

Also, if you have any comments on the Draft Charge please send them in as soon as possible.

Thanks,

Fran Eargle

From: Bowles, Jack
Sent: Tuesday, April 25, 2017 7:27 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Eargle, Frances <Eargle.Frances@epa.gov>
Subject: FW: Email note to Goodin

Hey John,

The LGAC's Protecting America's Waters Workgroup is meeting on **Wednesday, May 3rd, 4:30-5:30 ET** via teleconference. We would like you to speak to them regarding Waters of the U.S. E.O. We have also drafted a charge for the committee to respond to WOTUS. Are you or someone else available to speak to the workgroup and field questions?

Also, could y'all please review the Draft LGAC WOTUS Charge and provide us with any comments or revisions you may have. NOTE: The highlighted text is taken directly from the Federalism consultation information. We added a few questions and issues the LGAC might uniquely comment on. Let us know what you think. Thank you.

Best,

Jack

To: Fields, Wanda[Fields.Wanda@epa.gov]
Cc: Jones-Coleman, Diane[Jones-Coleman.Diane@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Evalenko, Sandy
Sent: Mon 5/1/2017 4:10:03 PM
Subject: FW: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review
[EO12866 WOTUS 2040-AF74 NPRM FRN 20170428.docx](#)
[Signed OWOW to AAA transmittal.pdf](#)
[OMB Review Memo Transmittal AAA To OP Step 1 WOTUS.docx](#)

Wanda: I just realized that I may have forgotten to forward these files to you and Diane. These are the files for the

Sandy

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Sent: Friday, April 28, 2017 2:21 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
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Subject: Request for an OGC concurrence memo, plus FYI the package transmitting to OW the draft proposed step 1 WOTUS rule for OMB review

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Thanks, all! This is a good milestone.

All the best,

Donna

From: Downing, Donna

Sent: Friday, April 28, 2017 1:55 PM

To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>

Cc: Jones-Coleman, Diane <Jones-Coleman.Diane@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Fields, Wanda <Fields.Wanda@epa.gov>

Subject: For review & processing: draft proposed step 1 WOTUS rule for OMB review

Hi Sandy:

Attached please find the package "Proposed Request for Public Comments on the Definition of Waters of the United States – Recodification of Preexisting Rules," ready for OMB interagency review. The attachments include:

- [REDACTED] The draft proposal (preamble and rule text)
- [REDACTED] A .pdf of John Goodin's signed transmittal of the package to Mike Shapiro
- [REDACTED] A Word transmittal memo for Mike's transmitting the package to OP's Samantha Davis.

Based on our conversation, I understand these three documents are sufficient for you to oversee OW's review and transmission of the package to OP for subsequent uploading to OMB. In addition, I am bringing a hardcopy of the three documents over as soon as I push "send" on this

email. Please let me know if there's anything additional you need.

Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Mon 5/1/2017 1:21:05 PM
Subject: RE: New Concern (OW WOTUS)

Mindy, would it make sense to invite Karen to this morning's 10:15? Or just keep this in mind and keep Karen apprised later?

From: Gude, Karen
Sent: Monday, May 01, 2017 8:58 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: FW: New Concern (OW WOTUS)

All,

Just FYI – Forwarding concern expressed by R9 RTOC Tribal Cochair re: tribal trust responsibility; second paragraph mentions 4/27 WOUS call.

Thanks,

Karen

From: Ebbert, Laura
Sent: Friday, April 28, 2017 11:32 PM
To: Brush, Jason <Brush.Jason@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>
Subject: FW: New Concern (OW WOTUS)

Karen, see email below that I am transmitting without comment from our RTOC Tribal Cochair.

LE

Laura Ebbert

Manager, Tribal Section

Land Division, LND-3-1

U.S. Environmental Protection Agency, Region 9

75 Hawthorne Street

San Francisco, CA 94105

(415) 947-3561

<http://www.epa.gov/region9/tribal>

From: a.bacock@bigpinepaiute.org [mailto:a.bacock@bigpinepaiute.org]

Sent: Friday, April 28, 2017 12:52 PM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Subject: New Concern

Laura,

I have not received any additional issues from tribes like I thought I would, but I do want to share something that is showing itself to be a pattern.

In reviewing notes from the Salton Sea call between EPA and tribes, hearing feedback from a call between Yerington Paiute Tribe and EPA regarding the Anaconda Superfund site...I am gathering an impression that trust responsibility to Tribes is waning. I know that is a general statement to make, but it appears that EPA priorities are shifting rapidly due to the new administration and it is having an impact on many different levels...including EPAs relationship with Tribes. I am sure that this sentiment will come forward during the Tribal Caucus and wanted you to be aware of what is most likely going to be an issue to be brought up.

I would say that this change is also showing itself at the DC level as the Office of Water held a call

yesterday which had some pathetic answers to questions from tribes. One question was why they were focusing in on Justice Scalia's opinion exclusively when reviewing the Waters of the US and not also relying on Justice Kennedy's opinion which has helped to shape the conversation to date. The answer was basically that EPA can use or not use whatever it wants to in order to define the regulation.

It appears that the Agency as a whole is trying to avoid scrutiny from the new administration and has hit a new low for morale which in combination is not helping our relationship.

Alan Bacock

Water Program Coordinator

Big Pine Paiute Tribe of the Owens Valley

760-938-2003 ext. 235

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Kaiser, Russell
Sent: Mon 5/1/2017 12:18:25 PM
Subject: Talking Points for WOTUS 2.0

Damaris – I know Donna & Rose are out for a few days and so this question is really for you - - is there an updated set of Talking Points that I can use for the National Mitigation Banking Conference on the status and approach for the rules – Thanks much – Russ

Russell L. Kaiser

Acting Associate Director

Oceans and Coastal Protection Division

1301 Constitution Ave., N.W.

Room 7114B West Bldg.

Washington, DC 20004

P: 202.566.0963

From: Jennings, Kim
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/3/2017 3:00:00 PM
End Date/Time: Wed 5/3/2017 4:00:00 PM

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Dreyfus, Melissa G.
Sent: Fri 4/28/2017 4:41:52 PM
Subject: waters of us handout
04 Kwok WatersoftheUS Handouts DC Dec2016.docx

Donna,

There is also this Waters of the US handout. Would you like to use/edit it?

Thanks!

melissa

Melissa Greer Dreyfus

National Water Quality Standards Branch, SHPD

Office of Science and Technology

Office of Water

U.S. Environmental Protection Agency

Phone: 202-566-9989

email: dreyfus.melissa@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: DC-WJCW-7217-M@epa.gov
Sent: Fri 4/28/2017 4:26:45 PM
[image2017-04-28-122639.pdf](#)

.jpg

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Barbery, Andrea
Sent: Thur 4/27/2017 9:05:07 PM
Subject: FW: Summary of EPW Hearing: A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule
Hearing Summary Senate EPW Review of WOTUS 04-26-17.docx

Y'all probably already saw the hearing but I wanted to share Denis' excellent summary. See also [this link](#) to Pruitt's statement.

From: Borum, Denis
Sent: Thursday, April 27, 2017 4:45 PM
To: AO-OCIR Everyone <AOOCIR_Everyone@epa.gov>; RCL's <CNRCLsOIntergov._Contacts@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>
Subject: Summary of EPW Hearing: A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule

All –

Please see attached and let me know of any questions. Thank you

Denis

Denis R. Borum

Congressional Liaison Specialist

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W. (MC-1301A)

Washington, D.C. 20460

(202) 564-4836 (phone)

(202) 501-1549 (fax)

borum.denis@epa.gov (e-mail)

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]
From: Evalenko, Sandy
Sent: Thur 4/27/2017 5:19:58 PM
Subject: FW: RESEND RE: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

FYI --

From: Neugeboren, Steven

Sent: Thursday, April 27, 2017 1:16 PM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron <brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Becki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>

Subject: RESEND RE: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

I had sent the urgent message below this morning but hearing that no one received it, so am resending.

Could ONE person please reply to all to confirm receipt?

Thanks.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Neugeboren, Steven

Sent: Thursday, April 27, 2017 11:27 AM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Damico, Brian <Damico.Brian@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cheatham, Reggie <cheatham.reggie@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Kevin Minoli <Minoli.Kevin@epa.gov>; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Donald.e.jackson@usace.army.mil; Brown, Byron

<brown.byron@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>

Cc: FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Washington, Valerie <Washington.Valerie@epa.gov>; Howard, MarkW <Howard.MarkW@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; McGartland, Al <McGartland.Al@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Clark, Becki <Clark.Beki@epa.gov>; Indermark, Michele <Indermark.Michele@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Lorie Schmidt <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>

Subject: WOTUS Draft preamble language on cost/benefit analysis for immediate review and decision/meeting today

Importance: High

I am sending this to all the EPA folks that are invitees to the Wednesday morning WOTUS meetings.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-548

To: R8 CWA Jurisdictional Team[R8_CWA_Jurisdictional_Team@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Livingston, Peggy
Sent: Thur 4/27/2017 3:21:31 PM
Subject: BNA item about revision to Clean Water Rule

New Water Rule Would Protect Fewer Streams, Senate Told

Snapshot

- Fewer waters, wetlands would be protected under the Clean Water Act using direction from former Justice Antonin Scalia

- Corps bemoans “marginalized” role in drafting rule

By [Amena H. Saiyid](#)

Fewer lakes, rivers and streams would receive federal protections if the EPA follows the late Justice Antonin Scalia's recommendation to read the jurisdiction of the Clean Water Act narrowly, a former agency official said.

“It would be considerably narrower than the Clean Water Rule,” Kenneth Kopocis, the Environmental Protection Agency's former deputy assistant administrator for water, told the Senate Environment and Public Works Committee, April 26. Kopocis spearheaded the Obama administration's efforts to craft the regulation (RIN:2040-AF30), which is also known as the waters of the U.S. (WOTUS) rule.

President Donald Trump has ordered the EPA to recraft the rule, which defines the reach of the Clean Water Act, based on Scalia's plurality opinion in a 2006 U.S. Supreme Court decision that sought to clarify the federal government's jurisdiction over wetlands (*Rapanos v. United States*, 547 U.S. 715, 62 ERC 1481 (U.S. 2006)).

Opponents of the existing rule, including many states, called it an unlawful expansion of federal authority. However, Sen. Thomas Carper (D-Del.), the ranking member on the Senate Environment and Public Works Committee, asked whether the Trump administration's rewritten rule would “expand or restrict jurisdiction.”

Most Streams, Wetlands Unprotected

If the agencies follow the Trump directive, then about 60 percent of the nation's streams and about 80 percent to 90 percent of wetlands would lose protection, Kopocis told Bloomberg BNA after the hearing. Scalia had said that wetlands and streams covered by the Clean Water Act had to flow continuously “as opposed to ordinarily dry channels through which water occasionally or intermittently flows.”

In response to Carper's question about expanding or narrowing protections, Maj. Gen. John Peabody, who was the deputy commanding general for civil and emergency operations at the corps from October 2013 to August 2015, said his agency establishes jurisdiction by going in the field and examining the waters or wetlands in question.

The Clean Water Rule, which is currently embroiled in litigation and stayed by a federal appeals court, acknowledged Scalia's opinion but relied heavily on Justice Anthony Kennedy's concurring opinion that emphasized the “significance” of the impact that upstream waters have on the health of downstream navigable rivers.

Misha Tseytlin, Wisconsin's solicitor general, said the nationwide stay imposed by the U.S. Court of Appeals for the Sixth Circuit, along with the 13-state stay by the U.S. District Court in North Dakota, are evidence of the weak legal underpinnings of the water rule. He said the courts would never have issued the stays if they thought the water rule would withstand final legal scrutiny.

Peabody called the corps' participation in the rulemaking process “marginalized,” which Sen. John Barrasso (R-Wyo.), the committee's chairman, said resulted in a “legally flawed” rule.

The corps' involvement was limited to providing analysis of various proposed changes or alterations to a draft of the rule, said Peabody, who spoke for himself and not the corps.

To contact the reporter on this story: Amena H. Saiyid in Washington at asaiyid@bna.com

To contact the editor responsible for this story: Paul Connolly at PConnolly@bna.com

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]
From: Kwok, Rose
Sent: Wed 4/26/2017 11:16:55 PM
Subject: RE: ACWA WOTUS Workgroup

Thanks, Mindy **Personal Matters / Ex. 6** so I'll be out of the office. If someone else can't go, let me know, and I'll try to work it into my schedule.

From: Eisenberg, Mindy
Sent: Wednesday, April 26, 2017 7:08 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Peterson, Carol <Peterson.Carol@epa.gov>
Subject: Fwd: ACWA WOTUS Workgroup

FYI keeping you in the loop

Sent from my iPhone

Begin forwarded message:

From: "Goodin, John" <Goodin.John@epa.gov>
Date: April 26, 2017 at 5:12:06 PM EDT
To: Julia Anastasio <janastasio@acwa-us.org>
Cc: Julian Gonzalez <jgonzalez@acwa-us.org>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Subject: RE: ACWA WOTUS Workgroup

Thanks, Julia—likewise.

Let me confirm and loop back to you, but I think we can work something out.

John

From: Julia Anastasio [mailto:janastasio@acwa-us.org]
Sent: Wednesday, April 26, 2017 4:54 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Julian Gonzalez <jgonzalez@acwa-us.org>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>

Subject: ACWA WOTUS Workgroup

Importance: High

John

Good to see you this afternoon. As I mentioned during the OW meeting we are pulling our WOTUS workgroup together and would love it if you or someone from your staff could join the workgroup on the phone to walk them through the process you all are going to follow. The call is scheduled for May 5th from 2-4. I know you cannot commit 2 hours but even a quick 30 minute presentation would be welcomed.

Thanks!

Julia Anastasio

Executive Director & General Counsel

Association of Clean Water Administrators

202.756.0600 (O)

202.746.8017 (c)

Save the Date for ACWA's 2017 Annual Meeting in Burlington, VT August 20-23, 2017.

To: Cindy Barger[cindy.s.barger.civ@mail.mil]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
Cc: Wesson, Dolores[Wesson.Dolores@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]
From: Kwok, Rose
Sent: Wed 4/26/2017 9:20:03 PM
Subject: RE: [Non-DoD Source] script/run of show for tomorrow's tribal webinar

Hi Folks,

Looks like there are currently 39 non EPA/non-Corps registrants for tomorrow's webinar. One of the registrants is from the Indian Health Service – **Deliberative Process / Ex. 5**

From: Kwok, Rose
Sent: Wednesday, April 26, 2017 4:19 PM
To: 'Barger, Cindy S CIV USARMY HQDA ASA CW (US)' <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Subject: RE: [Non-DoD Source] script/run of show for tomorrow's tribal webinar

Hi Folks,

Per our discussion today, I've made some edits to the CWA slide on the PPT (now slide 4 - I

Deliberative Process / Ex. 5). Here's the URL again:

Nonresponsive Internal URL/ Ex. 6

Here's my suggested edit, after discussion with Karen Gude, our tribal coordinator. Open to suggested edits.

Clean Water Act

Deliberative Process / Ex. 5

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US)

[<mailto:cindy.s.barger.civ@mail.mil>]

Sent: Wednesday, April 26, 2017 1:25 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Charles Smith <charles.r.smith567.civ@mail.mil>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; David.F.Dale@usace.army.mil

Subject: RE: [Non-DoD Source] script/run of show for tomorrow's tribal webinar

Deliberative Process / Ex. 5

Thanks!

Cindy

PRE-DECISIONAL/FOR OFFICIAL USE ONLY/NOT FOR DISTRIBUTION.

Cindy S. Barger

Environmental Planner

Office of the Assistant Secretary of the Army (Civil Works) Project Planning and Review

441 G Street, NW Rm 6R88

Washington, DC 20314

tel: (202) 761-0041

cel: (703)915-8995

-----Original Message-----

From: Eisenberg, Mindy [<mailto:Eisenberg.Mindy@epa.gov>]

Sent: Wednesday, April 26, 2017 12:58 PM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>

Subject: [Non-DoD Source] script/run of show for tomorrow's tribal webinar

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Eisenberg, Mindy has shared a OneDrive for Business file with you. To view it, click the link below.

tribal info-consultation webinars run of show Apr 27.docx < Caution-

Nonresponsive Internal URL/ Ex. 6

Please let me know if you have any questions about the run of show for tomorrow. Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Williams, Ann
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Kwok, Rose
Sent: Wed 4/26/2017 7:46:11 PM
Subject: RE: Requesting a new web area

Deliberative Process / Ex. 5

From: Thomas, Latosha
Sent: Wednesday, April 26, 2017 3:42 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: RE: Requesting a new web area

Hi,

Here's the response from OPA (Jessica Orquina in OWC)

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Wednesday, April 26, 2017 3:12 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: RE: Requesting a new web area

Looking at the webplan on the intranet – can you please change the Editor in Chief of the Clean Water Rule page from Travis to me the next time we provide edits? Thanks!

From: Bravo, Antonio
Sent: Wednesday, April 26, 2017 3:09 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>
Subject: Re: Requesting a new web area

That is part of it of course, but so is

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Wednesday, April 26, 2017 3:07:55 PM
To: Bravo, Antonio; Thomas, Latosha
Subject: RE: Requesting a new web area

Someone from the web office (maybe OEI?) really reamed us the last time we needed to launch a website because it wasn't on the web plan, etc. So I'm trying to prevent that from happening....

From: Bravo, Antonio
Sent: Wednesday, April 26, 2017 3:00 PM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Requesting a new web area

Perfect...I figured as such....

From: Thomas, Latosha
Sent: Wednesday, April 26, 2017 2:59:37 PM
To: Bravo, Antonio
Cc: Kwok, Rose
Subject: RE: Requesting a new web area

Hi!

I'm checking in on this now...

let you know what OPA says!

From: Bravo, Antonio
Sent: Wednesday, April 26, 2017 2:53 PM
To: Thomas, Latosha <Thomas.Latosha@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Fw: Requesting a new web area

Latosha, Can you look into this...especially since it is a sensitive subject....

From: Kwok, Rose
Sent: Wednesday, April 26, 2017 2:48 PM
To: Bravo, Antonio; Sheeler, Antonio
Cc: Bennett, Brittany; Christensen, Damaris
Subject: Requesting a new web area

Hi Antonios,

We'd like to request a new web area for the new waters of the U.S. rule.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for your help!

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Gude, Karen[Gude.Karen@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/26/2017 5:21:06 AM
Subject: Re: next steps tribal meetings

Hey rose. Sorry I'm just now getting to this.

Deliberative Process / Ex. 5

Damaris

Sent from my iPhone

On Apr 25, 2017, at 7:42 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, April 25, 2017 12:57 PM
To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: next steps tribal meetings

Hi all,

I am going to be out of the office for three days, but time is precious when we are working on short notice. I want to follow up on a couple of things – most importantly, the NCAI meeting.

First, we've done a lot. The consult letter was signed by the Administrator (!); mailed out to all the tribes; two webinars are set up; the powerpoint is almost finalized; and seems like we have a solid plan with Region 9 for the RTOC meeting.

There are also some outstanding issues.

Deliberative Process / Ex. 5

FWIW I am available all day tomorrow but not so much Thursday and Friday.

Dolores, I know you don't have a great deal of time available right now, which is why I've asked Brittany to step up and work with Karen on these pieces. I don't feel the need to be kept abreast of every decision, just really on where we land and why. I'll let you coordinate with Brittany on your level of involvement, and of course we are going to rely on Karen no matter what. ☺

Thanks, all!

Damaris

From: Gude, Karen
Sent: Wednesday, April 19, 2017 7:51 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: Draft consult email language...and trial email lists

Many thanks for the review and edits, Damaris!

Just a few things:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Christensen, Damaris

Sent: Tuesday, April 18, 2017 10:09 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: Draft consult email language...and trial email lists

Adding in the edited document, sorry, it's late. ☺

From: Christensen, Damaris

Sent: Tuesday, April 18, 2017 9:35 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: Draft consult email language...and trial email lists

Thanks Karen.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We'll stay in touch regarding the May R9 RTOC and the NCAI conference, but generally your outreach plan sounds good.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

. Unfortunately almost everyone will be pretty crazy tomorrow as we are getting ready for the federalism meeting. Rose would be my go-to for this. Could Chris Orvin help?

Thanks again for all your help today!

Damaris

From: Gude, Karen

Sent: Tuesday, April 18, 2017 3:58 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Draft consult email language...and trial email lists

Damaris and Delores,

Hello. I know that you have a million things going on at the moment, but just so that I'm prepared on my end once the tribal consultation letter has been signed by the Administrator, attached please find proposed draft email text to distribute to my tribal contacts list once the letter has been signed.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

And so that you are aware, my email distribution list will include:

- -
 -
 -
 -
 -
- ea

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

As for the in-person meetings, as you hopefully saw, we're scheduled for 5/4 at the R9 RTOC meeting, timing TBD. As soon as you have a better idea of a point person who will attend/lead the outreach meeting, please let me know, and I can connect them to Laura Ebbert, the R9 Regional Indian Coordinator. With regard to a possible session at the NCAI June meeting, I have an email out to Felicia with regard to reaching out to NCAI. She is on travel today. If possible, I'd like to touch base with her before connecting with NCAI...I should hopefully know more this week.

Finally, once we have the signed Administrator letter, I'll need the pdf...I

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I think that's it. If it sounds like I might have missed anything, please let me know.

Thanks!

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Downing, Donna[Downing.Donna@epa.gov]
From: Miller, Clay
Sent: Tue 4/25/2017 2:35:35 PM
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-7867

fyi

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Tuesday, April 25, 2017 10:09 AM
To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-7867

Control AX-17-000-7867 has been assigned to your office on 4/25/17 10:09 AM by Yvonne Smothers. Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-17-000-7867

Control Subject: DRF -Perspective on intention to eliminate the federal safeguards included in the 2015 Clean Water Rule

From: Suh, Rhea; Noppen, Trip Van; Brune, Michael; Alt, Margie; Pierno, Theresa; Magana, Mark; Middleton, Frederick S.; Wilkes, Brent; Wendelgass, Robert; Irvin, William Robert; Yarnold, David; Karpinski, Gene; Sarthou, Cynthia; Willbanks, Lee; Wilson, Ward; Hoyos, Renee' Victoria; Hays, Carol; Wright, Kimberlee; Stewart, Beth K.; Huffling, Katie; Ambs, Tom; Quintero, Adrianna; Silk, Nicole; Meyer, Kristy

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

From: Cooper, David R SES USARMY CEHQ (US)

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: FW: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

From: McDavit, Michael W.
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

To: Stacey.M.Jensen@usace.army.mil[Stacey.M.Jensen@usace.army.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil];
David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Eisenberg, Mindy
Sent: Mon 4/24/2017 9:25:47 PM
Subject: draft agenda for Wednesday's meeting
Agenda -- WOTUS 26 April 2017 v1.docx

Hi All,

Please let me know if you have any comments on the agenda for Wednesday's 10:00.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Morgan, James
Sent: Mon 4/24/2017 8:30:55 PM
Subject: Work group for new water rule

My office is quite interested in getting a seat at the table for the new and improved water of the U.S. rulemaking effort. We've been having some interesting discussions of how to

Our view at this point is that **Deliberative Process / Ex. 5**

J. T. Morgan, Attorney

Environmental Protection Agency

Office of Criminal Enforcement, Forensics and Training

Legal Counsel Division

Room 1204 C WJC South, Mail Code 2232A

1200 Pennsylvania Ave., N.W.

Washington, D.C. 20004

Telephone: 202-564-7684

Fax: 202-501-0579

Attorney Work Product

Help EPA fight pollution – report environmental violations at
<http://www.epa.gov/compliance/complaints/index.html>

From: Melgin, Wendy
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Declined: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

I'll be headed to Personal Matters / Ex. 6 Andrea should be on.

From: Christensen, Damaris

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: FW: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/25/2017 5:00:00 PM

End Date/Time: Tue 4/25/2017 6:00:00 PM

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 11:16 AM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US; Moyer, Jennifer A CIV USARMY CEHQ (US; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Cindy Barger; David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark; Swackhammer, J-Troy; Wendelowski, Karyn; Neugeboren, Steven; Ludwig-Monty, Sarah; Speir, Jeffrey; Flannery-Keith, Erin; Wesson, Dolores

Cc: Peck, Gregory

Subject: WOTUS-2 interagency staff meeting

When: Tuesday, April 25, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Muellerleile, Caryn[Muellerleile.Caryn@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Evalenko, Sandy
Sent: Fri 4/21/2017 5:34:11 PM
Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Caryn: this is odd because I put dates for each rule.

For Definition of waters of the U.S part 1 (San 6027) **Deliberative Process / Ex. 5**

For Definition of waters of the U.S part 2 (San 6027.1) **Deliberative Process / Ex. 5**

Do we have good names for the two rules that refer to step 1 and step 2?? If not, can we **Deliberative Process / Ex. 5**?

Sandy

Sent from my iPhone

On Apr 20, 2017, at 9:35 AM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Mm, I see we were being precise. Thanks.

From: Muellerleile, Caryn
Sent: Thursday, April 20, 2017 9:34 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

NPRM for both: 00/0000.

From: Christensen, Damaris
Sent: Thursday, April 20, 2017 9:34 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hi all,

Can someone confirm for me what dates we attached to each of these actions in the Reg Agenda? I'm wondering what public face we have already put forward on timing – we are getting questions following the federalism meeting.

Damaris

From: Kwok, Rose
Sent: Monday, April 10, 2017 2:30 PM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Oops – should be “plan to” and not “plans to” – see correction below

Action 1:

Deliberative Process / Ex. 5

Action 2:

Deliberative Process / Ex. 5

I understand that the first of these is the **Deliberative Process / Ex. 5**
correct? Can you provide alternate titles and abstract where necessary? Any sense of the timeline for these actions?

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

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(202) 564-2855

muellerleile.caryn@epa.gov

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FOR THE SIXTH CIRCUIT**

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Filed: October 09, 2015

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Environmental Law Clinic
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Washington, DC 20037

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Jackson, MS 39205

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Office of the Attorney General of Colorado
1300 Broadway, Tenth Floor
Denver, CO 80203

Ms. Tamara Zakim
Earthjustice
50 California Street
San Francisco, CA 94111

Re: Case Nos. 15-3751/15-3799/15-3817/15-3820/15-3822/15-3823/15-3831/15-3837/15-3839/15-3850/15-3853/15-3858/15-3885/15-3887/15-3948,
In re: EPA; Originating Case No. : EPA-HQ-OW-2011-0880

Dear Counsel,

The Court issued the enclosed order today in this case.

Sincerely yours,

s/Cathryn Lovely for Amy Gigliotti
Opinions Deputy
Direct Dial No. 513-564-7012

Enclosure

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 15a0246p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In re: ENVIRONMENTAL PROTECTION AGENCY
AND DEPARTMENT OF DEFENSE FINAL RULE;
“CLEAN WATER RULE: DEFINITION OF WATERS OF
THE UNITED STATES,” 80 FED. REG. 37,054
(JUNE 29, 2015).

Nos. 15-3799/3822/3853/3887

STATE OF OHIO, STATE OF MICHIGAN, and STATE
OF TENNESSEE (15-3799); STATE OF OKLAHOMA
(15-3822); STATE OF TEXAS, STATE OF LOUISIANA,
and STATE OF MISSISSIPPI (15-3853); STATE OF
GEORGIA, STATE OF WEST VIRGINIA, STATE OF
ALABAMA, STATE OF FLORIDA, STATE OF INDIANA,
STATE OF KANSAS, COMMONWEALTH OF KENTUCKY,
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES, STATE OF SOUTH
CAROLINA, STATE OF UTAH, and STATE OF
WISCONSIN(15-3887),

Petitioners,

v.

UNITED STATES ARMY CORPS OF ENGINEERS, et al.,

Respondents.

On Petition for Review of a Final Rule from the United States Army
Corps of Engineers and the Environmental Protection Administration.

No. EPA-HQ-OW-2011; Judicial Panel on Multi-District Litigation, No. 135.

Decided and Filed: October 9, 2015

Before: KEITH, McKEAGUE and GRIFFIN, Circuit Judges.

McKEAGUE, J., delivered the order of the court in which GRIFFIN, J., joined. KEITH,
J. (pg. 7), delivered a separate dissent.

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.* Page 2
3853/ 3887

ORDER OF STAY

McKEAGUE, Circuit Judge. Petitioners in these four actions, transferred to and consolidated in this court by the Judicial Panel on Multi-District Litigation for handling as a multi-circuit case, represent eighteen states¹ who challenge the validity of a Final Rule adopted by respondents U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, “the Clean Water Rule.” 80 Fed. Reg. 37,054 (June 29, 2015). The Clean Water Rule clarifies the definition of “waters of the United States,” as used in the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, “through increased use of bright-line boundaries” to make “the process of identifying waters protected under the Clean Water Act easier to understand, more predictable and consistent with the law and peer reviewed science, while protecting the streams and wetlands that form the foundation of our nation’s water resources.” 80 Fed. Reg. at 37,055. Petitioner states contend that the definitional changes effect an expansion of respondent agencies’ regulatory jurisdiction and dramatically alter the existing balance of federal-state collaboration in restoring and maintaining the integrity of the nation’s waters. Petitioners also contend the new bright-line boundaries used to determine which tributaries and waters adjacent to navigable waters have a “significant nexus” to waters protected under the Act are not consistent with the law as defined by the Supreme Court, and were adopted by a process that failed to conform to the rulemaking requirements of the Administrative Procedures Act (“APA”).

Although petitioners have moved the court to dismiss their own petitions for lack of subject matter jurisdiction under 33 U.S.C. § 1369(b)(1)—a matter on which briefing is pending—they also move for a stay of the Clean Water Rule pending completion of the court’s review. Respondents and numerous intervenors oppose the stay.² Respondents contend that we

¹The eighteen petitioner states are Ohio, Michigan, Tennessee, Oklahoma, Texas, Louisiana, Mississippi, Georgia, West Virginia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina, South Carolina, Utah and Wisconsin.

²Among the respondent-intervenors are several environmental conservation groups and several respondent-intervenor states who support the new Rule: New York, Connecticut, Hawaii, Massachusetts, Oregon, Vermont, Washington and the District of Columbia.

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.* Page 3
3853/ 3887

have jurisdiction, but insist that petitioners have not made the requisite showing to justify a stay of the Rule that became effective August 28, 2015. For reasons that follow, we now grant the stay pending determination of our jurisdiction.

The parties agree that our decision is guided by consideration of four factors: “(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” *Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). *See also Nken v. Holder*, 556 U.S. 418, 433 (2009). These are not prerequisites that must be met, but interrelated considerations that must be balanced. *Griepentrog*, 945 F.3d at 153. The motion for stay is addressed to our discretion, early in the case based on incomplete factual development and legal research, for the purpose of preserving the status quo pending further proceedings. *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004). The party seeking a stay bears the burden of showing that the circumstances of the particular case justify exercise of our discretion, guided by sound legal principles, to maintain the status quo pending conclusive determination of the legality of the action. *Nken*, 556 U.S. at 433–34.

The present circumstances pose a threshold question: What is the status quo? Petitioners ask us to stay enforcement of the Clean Water Rule that went into effect on August 28, 2015. They ask us to restore the status quo as it existed before the Rule went into effect. Respondents’ position is that the status quo is best preserved by leaving the Rule alone. Considering the pervasive nationwide impact of the new Rule on state and federal regulation of the nation’s waters, and the still open question whether, under the Clean Water Act, this litigation is properly pursued in this court or in the district courts, we conclude that petitioners have acted without undue delay and that the status quo at issue is the pre-Rule regime of federal-state collaboration that has been in place for several years, following the Supreme Court’s decision in *Rapanos v. United States*, 547 U.S. 715 (2006).

Regarding this “open question,” we are mindful of the dissent’s concern that we should not consider exercising our discretionary power to issue a stay before confirming our jurisdiction

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.* Page 4
3853/ 3887

under the Clean Water Act, 33 U.S.C. § 1369(b)(1), to do so. We have no doubt of our authority, however, “to make orders to preserve the existing conditions and the subject of the petition[s]” pending our receipt and careful consideration of briefing on the jurisdictional question. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 291 (1947). While petitioners have grounds to question our jurisdiction, *see* § 1369(b)(1), respondents’ contrary position has color as well. *See Nat’l Cotton Council of Am. v. U.S. E.P.A.*, 553 F.3d 927, 933 (6th Cir. 2009). Briefing on the jurisdictional question will be completed and the question ripe for decision in a matter of weeks.

Meanwhile, we conclude that petitioners have demonstrated a substantial possibility of success on the merits of their claims. Petitioners first claim that the Rule’s treatment of tributaries, “adjacent waters,” and waters having a “significant nexus” to navigable waters is at odds with the Supreme Court’s ruling in *Rapanos*, where the Court vacated the Sixth Circuit’s upholding of wetlands regulation by the Army Corps of Engineers. Even assuming, for present purposes, as the parties do, that Justice Kennedy’s opinion in *Rapanos* represents the best instruction on the permissible parameters of “waters of the United States” as used in the Clean Water Act,³ it is far from clear that the new Rule’s distance limitations are harmonious with the instruction.

Moreover, the rulemaking process by which the distance limitations were adopted is facially suspect. Petitioners contend the proposed rule that was published, on which interested persons were invited to comment, did not include any proposed distance limitations in its use of terms like “adjacent waters” and significant nexus.” Consequently, petitioners contend, the Final Rule cannot be considered a “logical outgrowth” of the rule proposed, as required to satisfy the notice-and-comment requirements of the APA, 5 U.S.C. § 553. *See Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007). As a further consequence of this defect, petitioners contend, the record compiled by respondents is devoid of specific scientific support for the distance limitations that were included in the Final Rule. They contend the Rule is therefore not

³There are real questions regarding the collective meaning of the Court’s fragmented opinions in *Rapanos*. *See United States v. Cundiff*, 555 F.3d 200, 208–10 (6th Cir. 2009).

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.* Page 5
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the product of reasoned decision-making and is vulnerable to attack as impermissibly “arbitrary or capricious” under the APA, 5 U.S.C. § 706(2).

In the extant briefing, respondents have not persuasively rebutted either of petitioners’ showings. Although the record compiled by respondent agencies is extensive, respondents have failed to identify anything in the record that would substantiate a finding that the public had reasonably specific notice that the distance-based limitations adopted in the Rule were among the range of alternatives being considered. Respondents maintain that the notice requirements were met by their having invited recommendations of “geographical limits” and “distance limitations.” Perhaps. But whether such general notice satisfies the “logical outgrowth” standard requires closer scrutiny. Nor have respondents identified specific scientific support substantiating the reasonableness of the bright-line standards they ultimately chose. Their argument that “bright-line tests are a fact of regulatory life” and that they used “their technical expertise to promulgate a practical rule” is undoubtedly true, but not sufficient. At this stage, at least, we are satisfied that petitioners have met their burden of showing a substantial possibility of success on the merits.

There is no compelling showing that any of the petitioners will suffer immediate irreparable harm—in the form of interference with state sovereignty, or in unrecoverable expenditure of resources as they endeavor to comply with the new regime—if a stay is not issued pending determination of this court’s jurisdiction. But neither is there any indication that the integrity of the nation’s waters will suffer imminent injury if the new scheme is not immediately implemented and enforced.

What is of greater concern to us, in balancing the harms, is the burden—potentially visited nationwide on governmental bodies, state and federal, as well as private parties—and the impact on the public in general, implicated by the Rule’s effective redrawing of jurisdictional lines over certain of the nation’s waters. Given that the definitions of “navigable waters” and “waters of the United States” have been clouded by uncertainty, in spite of (or exacerbated by) a series of Supreme Court decisions over the last thirty years, we appreciate the need for the new Rule. *See Rapanos*, 547 U.S. 715; *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of*

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.* Page 6
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Engineers, 531 U.S. 159 (2001); *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985). In one sense, the clarification that the new Rule strives to achieve is long overdue. We also accept that respondent agencies have conscientiously endeavored, within their technical expertise and experience, and based on reliable peer-reviewed science, to promulgate new standards to protect water quality that conform to the Supreme Court's guidance. Yet, the sheer breadth of the ripple effects caused by the Rule's definitional changes counsels strongly in favor of maintaining the status quo for the time being.

A stay allows for a more deliberate determination whether this exercise of Executive power, enabled by Congress and explicated by the Supreme Court, is proper under the dictates of federal law. A stay temporarily silences the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing. A stay honors the policy of cooperative federalism that informs the Clean Water Act and must attend the shared responsibility for safeguarding the nation's waters. *See* 33 U.S.C. § 1251(b) ("It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States to prevent, reduce, and eliminate pollution."). In light of the disparate rulings on this very question issued by district courts around the country—enforcement of the Rule having been preliminarily enjoined in thirteen states⁴—a stay will, consistent with Congress's stated purpose of establishing a national policy, 33 U.S.C. § 1251(a), restore uniformity of regulation under the familiar, if imperfect, pre-Rule regime, pending judicial review.

Accordingly, on due review of the relevant considerations in light of the briefs filed by petitioners, respondents and intervenors, and in the exercise of our discretion, we GRANT petitioners' motion for stay. The Clean Water Rule is hereby STAYED, nationwide, pending further order of the court.

⁴*See North Dakota v. U.S. E.P.A.*, No. 3:15-cv-59, 2015 WL 5060744 (D.N.D. Aug. 27, 2015) (staying operation of the Rule in North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, and New Mexico).

Nos. 15-3799/ 3822/ *State of Ohio, et al. v. U.S. Army Corps of Eng'rs, et al.*
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DISSENT

KEITH, Circuit Judge, dissenting. Because I believe that it is not prudent for a court to act before it determines that it has subject-matter jurisdiction, I respectfully dissent.

If we lack jurisdiction to review the Rule, then we lack jurisdiction to grant a stay. *See Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 77–78 (D.C. Cir. 1984) (holding that a district court did not have jurisdiction to review a rule or issue a writ of mandamus because of a special review statute that assigned judicial review to the courts of appeals); *see also Greater Detroit Recovery Auth. v. EPA*, 916 F.2d 317, 321–24 (6th Cir. 1990) (holding that a district court was without subject-matter jurisdiction and, therefore, did not have the authority to award attorneys' fees because a special review statute gave the courts of appeals exclusive jurisdiction).

One of the issues in this case is whether this court has exclusive jurisdiction to review the Rule in the first instance. We can enjoin implementation of the Rule if we determine that we have jurisdiction. But until that question is answered, our subject-matter jurisdiction is in doubt, and I do not believe we should stay implementation of the Clean Water Rule.

Because subject-matter jurisdiction is a threshold determination, I do not reach the merits of the petitioners' motion.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 2:30 PM-3:30 PM.

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Bennett, Brittany has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 9 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Wesson, Dolores

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Schafer, Jeannette has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 9 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Horchem, Brad

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Auerbach, Daniel
Sent: Thur 4/20/2017 4:39:24 PM
Subject: Re: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Are you okay if I try to call in? EZtech just bumped an appointment into the window...

From: Downing, Donna
Sent: Thursday, April 20, 2017 12:03:29 PM
To: Sachs, Erica; Williams, Ann; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Balasa, Kate; Palomaki, Ashley; DCRoomWest7301/DC-CCW-OWOW; Yu, Yone; Weaver, Kerryann; Somerville, Eric; Jensen, Stacey M CIV USARMY HQDA (US); Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Ludwig-Monty, Sarah; Speir, Jeffrey; Connors, Sandra; Wesson, Dolores
Subject: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Hi everybody:

Our biweekly Region-HQ WOTUS meeting is scheduled for today at 1pm. The agenda includes:

- A Sharepoint site for sharing documents among Workgroup members
- Update on Step 1 and Step 2 rules and preambles
- Federalism and tribal consultation: progress and upcoming activities
- **Deliberative Process / Ex. 5**

Those in Federal Triangle will be meeting in 7301 EPA West, the Potomac Conference Room.
CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Also attached FYI is the powerpoint used for yesterday's Federalism consultation with states, and talking points that senior leadership have OK'd for use when talking with outside groups. While the talking points can be used to talk with outside groups, please don't distribute them outside EPA at this point.

Talk to you at 1pm!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Balasa, Kate
Sent: Thur 4/20/2017 4:28:44 PM
Subject: RE: Additional WOTUS-related materials that may be of interest to the WDDs

Thank you, Donna. I will share with the WDDs.

Thanks for keeping us in the loop!

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Sent: Thursday, April 20, 2017 11:16 AM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Additional WOTUS-related materials that may be of interest to the WDDs

Hi Kate:

Attached are (1) the powerpoint used at yesterday's federalism meeting on the Step 2 WOTUS rulemaking, and (2) talking points that have been approved by senior leadership for discussing

the WOTUS activity with outside groups. I thought both might be of interest for the WDDs as additional background material for this afternoon's update briefing. My understanding is that,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Looking forward to our 3:30 (EDT) call!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your meeting was forwarded

Reid, Darren has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 2:30 PM-3:30 PM.

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
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Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, June 1, 2017 2:30 PM-3:30 PM.

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

[Reid, Darren](#) has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, April 20, 2017 1:00 PM-2:00 PM.

Recipients

[Connors, Sandra](#)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
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Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Connors, Sandra

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Muellerleile, Caryn[Muellerleile.Caryn@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Christensen, Damaris
Sent: Thur 4/20/2017 1:35:04 PM
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Mm, I see we were being precise. Thanks.

From: Muellerleile, Caryn
Sent: Thursday, April 20, 2017 9:34 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

NPRM for both: 00/0000.

From: Christensen, Damaris
Sent: Thursday, April 20, 2017 9:34 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hi all,

Can someone confirm for me what dates we attached to each of these actions in the Reg Agenda? I'm wondering what public face we have already put forward on timing – we are getting questions following the federalism meeting.

Damaris

From: Kwok, Rose
Sent: Monday, April 10, 2017 2:30 PM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Oops – should be “plan to” and not “plans to” – see correction below

Action 1:

Title - **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Action 2:

Title - **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

To: Kwok, Rose[Kwok.Rose@epa.gov]; Muellerleile, Caryn[Muellerleile.Caryn@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Christensen, Damaris
Sent: Thur 4/20/2017 1:33:31 PM
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hi all,

Can someone confirm for me what dates we attached to each of these actions in the Reg Agenda? I'm wondering what public face we have already put forward on timing – we are getting questions following the federalism meeting.

Damaris

From: Kwok, Rose
Sent: Monday, April 10, 2017 2:30 PM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Oops – should be “plan to” and not “plans to” – see correction below

Action 1:

Deliberative Process / Ex. 5

Action 2:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Heber, Margarete
Sent: Wed 4/19/2017 3:06:50 PM
Subject: RE: FYI Only: Water articles in the Press

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Wednesday, April 19, 2017 10:28 AM
To: OW-OWOW-EVERYONE <OWOWOWEVERYONE@epa.gov>
Subject: FYI Only: Water articles in the Press

Back in Washington today:

EPA officials will hold a two-hour-long confab at the agency's headquarters this afternoon with groups representing state and local officials to solicit their "input and wisdom" on the planned rewrite of the Waters of the U.S. rule. In a [letter](#) extending the invitation last week, Pruitt said the consultation is a priority "to both myself and President Trump." But don't expect unanimity from attendees: States were fiercely divided on the Obama administration's rule, with more than 30 filing suits against it, while others sided with EPA in support of the rule. Meanwhile, some of the associations that were invited to the meeting represent a specific set of interests in states — for instance, sewer administrators and wetlands managers — whose stake in the rule could differ from their governor's or even each other's.

CARPER QUESTIONS PRUITT'S WOTUS PLANS:

Top Senate EPW Democrat [Tom Carper](#) asked Pruitt to disavow any discussions among some industry groups about whether the agency could hire private lawyers to rewrite the Waters of the U.S. regulation, Pro's Annie Snider [reports](#). It comes after POLITICO [reported](#) that some industry groups with close ties to Pruitt are exploring whether EPA could outsource work on the contentious regulation. In response, EPA spokeswoman Liz Bowman said: "To my knowledge, we are not contracting with an outside firm at this time for WOTUS."

2nd Circ. Won't Reconsider EPA Water Transfer Rule Ruling

[Law360, New York](#)- The Second Circuit on Tuesday declined to grant en banc review of a panel

decision that revived a U.S. Environmental Protection Agency rule exempting some water transfers from Clean Water Act permitting requirements.

Three groups of rule opponents had asked for panel or en banc review of the panel's January decision restoring the EPA's 2008 National Pollutant Water Transfer Rule. In brief orders, the Second Circuit denied each request.

Water Utilities, Environmentalists Criticize EPA Household Lead Level Plan

EPA's plan to develop a "health-based benchmark" to assess the relationship between drinking water lead levels and blood lead levels in children is drawing criticism from drinking water utilities, some environmentalists and the state of Texas, which each raise varying concerns about whether the effort will succeed in better protecting children from lead risks.

The criticisms come in recent public comments filed ahead of an April 5 deadline for input on EPA's draft report, "Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water," that outlines how the agency plans to assess the relationship between constant rate lead exposures of children and blood lead levels (BLLs).

The effort responds in part to recommendations from an EPA advisory panel on how to revise the Safe Drinking Water Act lead and copper rule (LCR). Among other things the National Drinking Water Advisory Council (NDWAC) called for the establishment of a "household action level" based on the amount of lead in drinking water that would cause an average, healthy infant consuming infant formula made with water to have a BLL greater than 5 micrograms per deciliter (ug/dL).

However, in order to avoid confusion with the existing LCR system-wide "action level," EPA is using the terminology "health-based benchmark," and has outlined three modeling scenarios to develop it.

Two of the approaches use the agency's Integrated Exposure Biokinetic and Uptake (IEUBK) model, and the third uses the Stochastic Human Exposure and Dose Simulation (SHEDS) multimedia model with regression equations relating to lead uptake to BLLs derived from IEUBK. All three approaches use the same input data sources, but differ in how the model output is used, EPA says.

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Kwok, Rose
Sent: Wed 4/19/2017 12:59:18 PM
Subject: Re: Update on federalism meeting logistics

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 18, 2017, at 11:14 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

Anyway I guess however it works out things will be ok.

Damaris

From: Wesson, Dolores
Sent: Tuesday, April 18, 2017 6:07 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Schaefer-Gomez, Julia <Schaefer-Gomez.Julia@epa.gov>
Subject: RE: Update on federalism meeting logistics

Good afternoon Damaris and Donna,

Deliberative Process / Ex. 5

Thank you for your patience.

Dolores

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 11:33 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>
Cc: Strickler, Jacob <Strickler.Jacob@epa.gov>
Subject: Update on federalism meeting logistics

Just a quick update about where we are and what we need.

Done:

1. We are moving the meeting to 1117A.
2. Jake Strickler from CPRC has agreed to facilitate the meeting
3. We have an operator-assisted teleconference line.

For those who will speak during the meeting, please call – (

Nonresponsive Conference Code/ Ex. 6

For those just listening, please call –

Nonresponsive Conference Code/ Ex. 6

For both, please reference the conference ID to be admitted into the call:

Nonresponsive Conference Code/ Ex. 6

4. Brittany and Dan will meet people from the EPA East entrance to the meeting room, and get them signed in. This would be from say 1:45 to a little after 2.

In process:

1. Tech support: Brittany and Rose are working to get tech support – I think it looks like we will provide the equipment and Ron Slotkin will help with the details, but they'll be able

Deliberative Process / Ex. 5

Can anyone else think of something I'm leaving out?

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/19/2017 3:14:03 AM
Subject: FW: Update on federalism meeting logistics

Deliberative Process / Ex. 5

Anyway I guess however it works out things will be ok.

Damaris

From: Wesson, Dolores
Sent: Tuesday, April 18, 2017 6:07 PM
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Deliberative Process / Ex. 5

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Cc: Strickler, Jacob <Strickler.Jacob@epa.gov>
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In process:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Can anyone else think of something I'm leaving out?

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 4/19/2017 12:30:43 AM
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 8:29 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Tuesday, April 18, 2017 5:46 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 5:44 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Kwok, Rose

Sent: Tuesday, April 18, 2017 5:43 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: comms materials

I've put them here on the Sharepoint:

Nonresponsive Internal URL/ Ex. 6

The Regions should probably also have access to these materials, which could happen on the CWR Workgroup page. I can add them to a folder there.

From: Eisenberg, Mindy

Sent: Tuesday, April 18, 2017 4:55 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: comms materials

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Tuesday, April 18, 2017 4:54 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: RE: comms materials

I'll make sure this approved documents are in a separate folder on the Sharepoint and make them read only so that can't be edited there.

From: Eisenberg, Mindy

Sent: Tuesday, April 18, 2017 4:53 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Subject: comms materials

Deliberative Process / Ex. 5

Please share with your workgroups.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/19/2017 12:28:56 AM
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Tuesday, April 18, 2017 5:46 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: comms materials

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 5:44 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: comms materials

Deliberative Process / Ex. 5

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Sent: Tuesday, April 18, 2017 5:43 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: comms materials

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From: Eisenberg, Mindy
Sent: Tuesday, April 18, 2017 4:55 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: comms materials

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose
Sent: Tuesday, April 18, 2017 4:54 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: comms materials

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From: Eisenberg, Mindy
Sent: Tuesday, April 18, 2017 4:53 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: comms materials

Deliberative Process / Ex. 5

Please share with your workgroups.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 4/19/2017 12:28:52 AM
Subject: RE: can we reserve 3233 for tribal consultation calls?

Do we still need a room for the tribal webinar on April 27?

From: Kwok, Rose
Sent: Thursday, April 13, 2017 10:07 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: can we reserve 3233 for tribal consultation calls?

Yes, the main thing is the telecom...the built in systems are better than the table phones

Sent from my iPhone

On Apr 13, 2017, at 10:05 AM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

I don't expect that the tribal consultation webinars will be heavily attended in person. I think the key is getting a room with good telecomm connections. Thoughts?

Damaris

Sent from my iPhone

On Apr 13, 2017, at 9:59 AM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:

I can confirm 2369B for May 18, 2017 from 1:30pm-3:30pm. I cannot confirm 3233 or 2369b for April 27, 2017

From: Eisenberg, Mindy
Sent: Thursday, April 13, 2017 9:55 AM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: can we reserve 3233 for tribal consultation calls?

We actually now have the tribal on May 18.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Thursday, April 13, 2017 9:09 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Fwd: can we reserve 3233 for tribal consultation calls?

Deliberative Process / Ex. 5

There's been discussion about moving the room because our invite list has grown but I don't know where that stands. :/

Damaris

Sent from my iPhone

Begin forwarded message:

From: "Penman, Crystal" <Penman.Crystal@epa.gov>
Date: April 13, 2017 at 7:30:02 AM EDT
To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Subject: RE: can we reserve 3233 for tribal consultation calls?

My apologies. I can only reserve May 17th in 3233. April 27, 3233 and 2369b are not available.

From: Christensen, Damaris
Sent: Tuesday, April 11, 2017 4:14 PM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Subject: can we reserve 3233 for tribal consultation calls?

On the following dates and times – actually starting half an hour before the times below.

Thursday, April 27th 2-3:30 EDT

Wednesday, May 17 1:30-3:30 EDT

If we can't get 3233, is 2369B available?

Many thanks.

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 4/18/2017 10:36:53 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 6:24 PM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

You can see the entire presentation at the following link:

Nonresponsive Internal URL/ Ex. 6

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Goodin, John
Sent: Tuesday, April 18, 2017 5:36 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Thanks

John

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 4:38 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Peck, Gregory

Sent: Tuesday, April 18, 2017 2:18 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-
Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan,
Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven

Sent: Tuesday, April 18, 2017 1:32 PM

To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Peck, Gregory

Sent: Tuesday, April 18, 2017 12:39 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Gregory E. Peck

Chief of Staff

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

Washington, D.C. 20460

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Schaefer-Gomez, Julia[Schaefer-Gomez.Julia@epa.gov]
From: Wesson, Dolores
Sent: Tue 4/18/2017 10:06:37 PM
Subject: RE: Update on federalism meeting logistics

Good afternoon Damaris and Donna,

Deliberative Process / Ex. 5

Thank you for your patience.

Dolores

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Sent: Tuesday, April 18, 2017 11:33 AM
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Cc: Strickler, Jacob <Strickler.Jacob@epa.gov>
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For those just listening, please call —

Nonresponsive Conference Code/ Ex. 6

For both, please reference the conference ID to be admitted into the call:

Nonresponsive Conference Code/ Ex. 6

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In process:

Deliberative Process / Ex. 5

Can anyone else think of something I'm leaving out?

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 4/18/2017 7:34:55 PM
Subject: RE: Clean Water Rule Conference Call

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, April 18, 2017 3:14 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: Clean Water Rule Conference Call

Deliberative Process / Ex. 5

Donna

From: Roger Gwinn [<mailto:rgwinn@tfgnet.com>]
Sent: Tuesday, April 18, 2017 12:42 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Clean Water Rule Conference Call

Is there dial-in availability for this meeting?

W Roger Gwinn
The Ferguson Group
1130 Connecticut Avenue, N.W.
Suite 300, Washington, DC 20036
~~202-261-6006 (Office)~~
Personal Phone / Ex. 6
202-331-1598 (Fax)
roger.gwinn@thefergusongroup.com

To: Downing, Donna[Downing.Donna@epa.gov]
From: Roger Gwinn
Sent: Tue 4/18/2017 4:41:32 PM
Subject: Clean Water Rule Conference Call

Is there dial-in availability for this meeting?

W Roger Gwinn
The Ferguson Group
1130 Connecticut Avenue, N.W.
Suite 300, Washington, DC 20036
202-261-6006 (Office)
Personal Phone / Ex. 6
202-331-1598 (Fax)
roger.gwinn@thefergusongroup.com

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Tue 4/18/2017 3:03:05 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Have we heard back from Sarah or Layne yet?

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 10:52 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Damaris

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 9:57 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 5:29 PM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-

Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>;
Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,

Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Mindy

The April 19, 2017 Federalism Consultation meeting on the definition of "Waters of the United States" is not open to the press. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA's policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” and embark upon rulemaking to define “Water of the U.S.”

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris

Sent: Monday, April 17, 2017 5:18 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday’s federalism meeting: a draft agenda, a draft “run of show” with TPs for senior leaders, and the draft powerpoint. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please note that we’ve learned over the course of our federalism consultations that it is important

to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Goodin, John
Sent: Tue 4/18/2017 2:39:23 PM
Subject: Re: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Will try to get to this before our 1p
Thanks

Sent from my iPhone

On Apr 18, 2017, at 10:35 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi John:

Attached is a one-page background document for Thursday's WDD call giving them an update on WOTUS-2.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<WDD Call - 2017 April 20 - WOTUS-2 Update v2.docx>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 4/18/2017 2:38:56 PM
Subject: RE: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, April 18, 2017 10:36 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Hi John:

Attached is a one-page background document for Thursday's WDD call giving them an update on WOTUS-2.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Christensen, Damaris
Sent: Tue 4/18/2017 2:30:40 PM
Subject: RE: federalism meeting logistics

Donna and Dolores,

Deliberative Process / Ex. 5

Damaris

From: Christensen, Damaris
Sent: Friday, April 14, 2017 11:13 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Hurlld, Kathy <Hurlld.Kathy@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>
Subject: federalism meeting logistics

Just a quick update about where we are and what we need since everything is moving so quickly.

Done:

1. We are moving the meeting to 1117A from 3233. Discussion with Drew, Jake and Donna suggest it will be more comfortable for a big crowd.
2. Jake Strickler from CPRC has agreed to facilitate the meeting
3. Drafts of the agenda, the powerpoint and the run of show (aka TPs/script for Sarah) are in the Outreach/Federalism folder of the 2017 WOTUS Sharepoint site. Please feel free to edit.

Deliberative Process / Ex. 5

4. Jake has put a request in for an operator-assisted teleconference line so we can identify those calling in and have some help moderating the phone lines. We still need to work some

details out.

To DO:

Deliberative Process / Ex. 5

Can anyone else think of something I'm leaving out?

Damaris

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Alexander, Laurie
Sent: Tue 4/18/2017 1:12:18 PM
Subject: RE: thoughts? Suggestions?

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Monday, April 17, 2017 7:08 PM
To: Alexander, Laurie <Alexander.Laurie@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: thoughts? Suggestions?

Deliberative Process / Ex. 5

To: Alexander, Laurie[Alexander.Laurie@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 11:07:53 PM
Subject: thoughts? Suggestions?

Deliberative Process / Ex. 5

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Reid, Darren
Sent: Mon 4/17/2017 9:49:08 PM
Subject: FW: WOTUS Federalism Meeting draft materials
[WOTUS Federalism Meeting Agenda.docx](#)
[federalism draft ppt.pptx](#)
[federalism DRAFT run of show.docx](#)

Got them from john

From: Goodin, John
Sent: Monday, April 17, 2017 5:44 PM
To: Reid, Darren <Reid.Darren@epa.gov>
Subject: FW: WOTUS Federalism Meeting draft materials

Please print... thanks!

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,

Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Mindy

The April 19, 2017 Federalism Consultation meeting on the definition of “Waters of the United States” is not open to the press. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA’s policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” and embark upon rulemaking to define “Water of the U.S.”

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 9:35:12 PM
Subject: RE: Your request for Licensed Software is denied

I suggest emailing Antonio at the very least so that he knows your request was denied?

From: Downing, Donna
Sent: Monday, April 17, 2017 5:33 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

From: Kwok, Rose
Sent: Monday, April 17, 2017 5:28 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Monday, April 17, 2017 5:25 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Donna

From: Kwok, Rose
Sent: Monday, April 17, 2017 5:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Your request for Licensed Software is denied

That's weird...I wonder why mine was approved...

From: Downing, Donna
Sent: Monday, April 17, 2017 5:04 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: FW: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Donna

From: EZ Forms [<mailto:no-reply@sharepointonline.com>]
Sent: Monday, April 17, 2017 3:25 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Your request for Licensed Software is denied

Hi Downing, Donna,

Your request for Licensed Software has been denied.

Approver Comment: Project Online must be purchased

[Click here to view details](#)

[Click here to view details \(508 view\)](#)

This is a system generated message, please do not respond.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 9:28:02 PM
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Monday, April 17, 2017 5:25 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Donna

From: Kwok, Rose
Sent: Monday, April 17, 2017 5:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Monday, April 17, 2017 5:04 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: FW: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Donna

From: EZ Forms [<mailto:no-reply@sharepointonline.com>]
Sent: Monday, April 17, 2017 3:25 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Your request for Licensed Software is denied

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Approver Comment: Project Online must be purchased

[Click here to view details](#)

[Click here to view details \(508 view\)](#)

This is a system generated message, please do not respond.

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 9:05:23 PM
Subject: RE: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Monday, April 17, 2017 5:04 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: FW: Your request for Licensed Software is denied

Deliberative Process / Ex. 5

Donna

From: EZ Forms [<mailto:no-reply@sharepointonline.com>]
Sent: Monday, April 17, 2017 3:25 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Your request for Licensed Software is denied

Hi Downing, Donna,

Your request for Licensed Software has been denied.

Approver Comment: Project Online must be purchased

[Click here to view details](#)

[Click here to view details \(508 view\)](#)

This is a system generated message, please do not respond.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 4:51:52 PM
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Monday, April 17, 2017 12:43 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Hiya Rose –

Yes, I got an out-of-office message.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

From: Kwok, Rose
Sent: Monday, April 17, 2017 12:41 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Personal Matters / Ex. 6

From: Downing, Donna

Sent: Monday, April 17, 2017 12:39 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Penman, Crystal <Penman.Crystal@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>

Subject: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Hi Ann:

Attached please find a draft agenda for Wednesday's 10am leadership meeting on WOTUS-2.

Deliberative Process / Ex. 5 Please let me know if you have any edits or other suggestions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 4/17/2017 4:40:57 PM
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Personal Matters / Ex. 6

From: Downing, Donna
Sent: Monday, April 17, 2017 12:39 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Penman, Crystal <Penman.Crystal@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Hi Ann:

Attached please find a draft agenda for Wednesday's 10am leadership meeting on WOTUS-2.

Deliberative Process / Ex. 5 Please let me know if you have any edits or other suggestions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Mon 4/17/2017 4:39:03 PM
Subject: Automatic reply: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Thank you for your message. I am out of the office and will not be checking email regularly during this time. If you need immediate assistance please contact Macara Lousberg.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: McGill, Thomas
Sent: Mon 4/17/2017 3:22:11 PM
Subject: RE: talking points on CWR

And yes, we'll keep this close-hold.

From: McGill, Thomas
Sent: Monday, April 17, 2017 11:20 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: talking points on CWR

Thanks Mindy!

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 11:13 AM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: talking points on CWR

We are currently waiting for comments from OPA on a revised set of talking points. Here is the draft for Mary's reference, but please do not circulate them.

thanks

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: McGill, Thomas

Sent: Monday, April 17, 2017 11:05 AM

To: Balasa, Kate <balasa.kate@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>

Subject: FW: talking points on CWR

Do you know whether the attachment reflects the latest talking points? Mary Walker, our Division Director, is giving a talk at the Georgia Water Resources Conference on Wed, and she's likely to get questions on this. Thanks! Tom

From: Zapata, Cesar

Sent: Friday, March 10, 2017 12:27 PM

To: Lincoln, Larry <Lincoln.Larry@epa.gov>; Allenbach, Becky <Allenbach.Becky@epa.gov>;
Benante, Joanne <benante.joanne@epa.gov>; Diaz, Denisse <Diaz.Denisse@epa.gov>; McGill,
Thomas <Mcgill.Thomas@epa.gov>; Rigger, Don <Rigger.Don@epa.gov>; Thomas, Chris
<Thomas.Chris@epa.gov>; Walker, Mary <walker.mary@epa.gov>

Subject: FYI: talking points on CWR

This is FYI. Please don't distribute until we have time to discuss it in our Monday Staff Meeting.

César A. Zapata

Deputy Director, Water Protection Division

United States Environmental Protection Agency, Region 4

Tel: 404-562-9744

From: Balasa, Kate

Sent: Friday, March 10, 2017 12:14 PM

To: Garcia, Bert <Garcia.Bert@epa.gov>; Garcia, David <Garcia.David@epa.gov>; Gratz, Jeff <Gratz.Jeff@epa.gov>; Gullatt, Kristin <Gullatt.Kristin@epa.gov>; Hamjian, Lynne <Hamjian.Lynne@epa.gov>; Henry, Timothy <henry.timothy@epa.gov>; Rigger, Don <Rigger.Don@epa.gov>; Robichaud, Jeffery <Robichaud.Jeffery@epa.gov>; rogers, rick <rogers.rick@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Honker, William <honker.william@epa.gov>; Johnson, Arthur <Johnson.Arthur@epa.gov>; Korleski, Christopher <korleski.christopher@epa.gov>; Laureano, Javier <laureano.javier@epa.gov>; Lueckenhoff, Dominique <Lueckenhoff.Dominique@epa.gov>; O'Connor, Darcy <oconnor.darcy@epa.gov>; Pomponio, John <Pomponio.John@epa.gov>; Psyk, Christine <Psyk.Christine@epa.gov>; Torres, Tomas <Torres.Tomas@epa.gov>; Walker, Mary <walker.mary@epa.gov>

Cc: Bahrman, Sarah <Bahrman.Sarah@epa.gov>; Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; Brandt, Peter <Brandt.Peter@epa.gov>; Cote, Mel <Cote.Mel@epa.gov>; Downing, Jane <Downing.Jane@epa.gov>; Powell, Sheri <Powell.Sheri@epa.gov>; Schmit, Ayn <Schmit.Ayn@epa.gov>; Taylor, Jori <taylor.jori@epa.gov>

Subject: FW: talking points on CWR

All,

Please find attached the latest talking points on the Clean Water Rule activities from OW Communications staff. This was also sent out to the Region's PADs.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

To: Downing, Donna[Downing.Donna@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Wesson, Dolores
Sent: Mon 4/17/2017 1:56:37 PM
Subject: RE: Potential Roles on Clean Water Rulemaking

Donna,

Thank you for your warm welcome. I will call Damaris today and see how best to proceed. I can see things are fast and furious. I look forward to learning the ropes and being part of your team soon.

Dolores

From: Downing, Donna
Sent: Friday, April 14, 2017 2:26 PM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Potential Roles on Clean Water Rulemaking

Hi Dolores!

Welcome aboard! I'm glad that Mike had an opportunity to talk with you about upcoming tasks at a more specific level that you and I had so far, and am particularly delighted that you'll be working as part of the WOTUS-2 team. I'd suggest you give Damaris Christensen a call to hear more specifics about what's up regarding federalism and tribal consultation, in that Damaris has gotten those balls rolling in anticipation of your joining us. She can be reached

Personal Matters / Ex. 6

Personal Matters / Ex. 6

One addendum to Mike's email below. Our contact on tribal issues has been Karen Goode, OW's tribal coordinator. Brittany Bennett in the Wetlands Regulatory Branch also is interested and likely available to help with tribal consultation.

Looking forward to working with you!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: McDavit, Michael W.
Sent: Friday, April 14, 2017 2:14 PM
To: Wesson, Dolores <Wesson.Dolores@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: Potential Roles on Clean Water Rulemaking

Hi Dolores,

Deliberative Process / Ex. 5

- **Federalism coordinator** (see <https://www.epa.gov/laws-regulations/summary-executive-order-13132-federalism>)

Coordinate the federalism efforts and write the reports/summaries for the docket. The first meeting with key state groups is scheduled for April 19 at 2 pm. At this meeting, you would probably just absorb what was going on and not have a speaking role. We will have leadership and subject matter experts on hand and Jake Strickler, from the Conflict Prevention and Resolution Ctr, may help with facilitation. (Kathy Hurlb did a lot of this for the 2011 guidance.)

- **Tribal consultation coordinator** (see <https://www.epa.gov/laws-regulations/summary-executive-order-13175-consultation-and-coordination-indian-tribal>)

Coordinate the tribal consultation - working with Karen Metchis, army, regions/districts, etc to carry out outlined process, coordinate response, and write reports for the docket. I may ask

Personal Matters / Ex. 6

Thanks,

Michael

W. Michael McDavit, Chief

Wetlands Strategies and State Programs Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 4/14/2017 6:43:41 PM
Subject: RE: Potential Roles on Clean Water Rulemaking

Thx – Mike took what I sent him and then ran with it... hopefully in discussion with you? Like where did Karen Metchis come from and who is she?

From: Downing, Donna
Sent: Friday, April 14, 2017 2:26 PM
To: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Potential Roles on Clean Water Rulemaking

Hi Dolores!

Welcome aboard! I'm glad that Mike had an opportunity to talk with you about upcoming tasks at a more specific level that you and I had so far, and am particularly delighted that you'll be working as part of the WOTUS-2 team. I'd suggest you give Damaris Christensen a call to hear more specifics about what's up regarding federalism and tribal consultation, in that Damaris has gotten those balls rolling in anticipation of your joining us. She can be reached on

Personal Matters / Ex. 6

Personal Matters / Ex. 6

One addendum to Mike's email below. Our contact on tribal issues has been Karen Goode, OW's tribal coordinator. Brittany Bennett in the Wetlands Regulatory Branch also is interested and likely available to help with tribal consultation.

Looking forward to working with you!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: McDavit, Michael W.

Sent: Friday, April 14, 2017 2:14 PM

To: Wesson, Dolores <Wesson.Dolores@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>

Subject: Potential Roles on Clean Water Rulemaking

Hi Dolores,

Deliberative Process / Ex. 5

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ **Federalism coordinator** (see <https://www.epa.gov/laws-regulations/summary-executive-order-13132-federalism>)

Coordinate the federalism efforts and write the reports/summaries for the docket. The first meeting with key state groups is scheduled for April 19 at 2 pm. At this meeting, you would probably just absorb what was going on and not have a speaking role. We will have leadership and subject matter experts on hand and Jake Strickler, from the Conflict Prevention and Resolution Ctr, may help with facilitation. (Kathy Hurlb did a lot of this for the 2011 guidance.)

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ **Tribal consultation coordinator** (see <https://www.epa.gov/laws-regulations/summary-executive-order-13175-consultation-and-coordination-indian-tribal>)

Coordinate the tribal consultation - working with Karen Metchis, army, regions/districts, etc to carry out outlined process, coordinate response, and write reports for the docket. I may ask

Personal Matters / Ex. 6

Thanks,

Michael

W. Michael McDavit, Chief

Wetlands Strategies and State Programs Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Fri 4/14/2017 6:40:45 PM
Subject: RE: OW Talking Points for the OD Staff Meeting - Due 11:00 am April 13, 2017

Donna –

Here are some TPs on the upcoming featured collection in JAWRA on connectivity. This is to serve as an advanced heads up for management

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

ORD Publication Update

Deliberative Process / Ex. 5

From: Brown, Sineta
Sent: Tuesday, April 11, 2017 3:53 PM
To: OW-OWOW-WD <OWOWOWWD@epa.gov>
Subject: OW Talking Points for the OD Staff Meeting - Due 11:00 am April 13, 2017

Good Afternoon Wetlanders,

Please send your updated Talking Points to me by **11:00 am April 13, 2017**. If you have any questions, please feel free to give me a call or send me an email message.

Sineta Brown

Program Analyst

Office of Wetlands Oceans and Watersheds

Wetlands Division

202-564-3666

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Fri 4/14/2017 5:48:01 PM
Subject: Post on the EO/rule

I saw this linked to on Twitter...I hadn't heard of the person they are interviewing but here's his perspective. I'm not sure why he said the CWR was not yet effective...

http://www.ppic.org/main/blog_detail.asp?i=2259

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 4/14/2017 5:34:34 PM
Subject: RE: Two Docketing Issues

Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Friday, April 14, 2017 1:02 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Two Docketing Issues

Thanks Rose!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Friday, April 14, 2017 12:28 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Two Docketing Issues

Hi Mindy and Donna,

This email serves as two purposes.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Carrie's Response

Attorney Work Product / Ex. 5

Let me know if you'd like to discuss.

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Thursday, April 13, 2017 5:06 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie
<Wehling.Carrie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Question re: letters/emails etc. we are receiving

Hi Simma and Carrie,

Deliberative Process / Ex. 5

Thanks!

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 4/14/2017 3:32:28 PM
Subject: FW: Request for Discussion with American Exploration and Production Council

Fyi

From: Eisenberg, Mindy
Sent: Friday, April 14, 2017 7:47 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: Request for Discussion with American Exploration and Production Council

We might need to coordinate with Macara.

Sent from my iPhone

On Apr 13, 2017, at 9:48 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

Damaris

Sent from my iPhone

On Apr 13, 2017, at 4:59 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

Let's find time soon to talk about our message on meeting with stakeholders.

thanks

Mindy Eisenberg

Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290

eisenberg.mindy@epa.gov

From: Maggi Young [<mailto:Maggi.Young@chk.com>]
Sent: Thursday, April 13, 2017 3:41 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: bthompson@axpc.us
Subject: Request for Discussion with American Exploration and Production Council

Ms. Eisenberg:

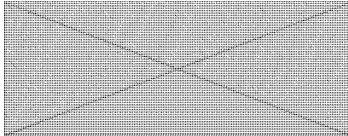
On behalf of the American Exploration and Production Council's (AXPC) Water Issues Subcommittee, I would like to request a brief meeting with yourself, or your delegate, to discuss regulatory reform at EPA focusing on the WOTUS effort. I am sure that you have received many such requests, but as our trade organization prepares to respond to the agency's recently issued request for comment and prepares for the agency's WOTUS effort, a broad discussion with the agency would be most useful. I believe a thirty minute conversation should be sufficient. Please respond if you are agreeable to such a conversation. For your convenience, AXPC will be meeting in D.C. on April 25 and 26 if those days are agreeable with your schedule. Thank you for your consideration and Happy Easter!

AXPC is a national trade association representing 33 of America's largest and most independent oil and natural gas exploration and production companies. AXPC members are "independent" in that their operations are limited to exploration for and production of oil and natural gas. Moreover, our members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the

energy business, such as downstream refining and marketing. AXP members are leaders in developing and applying innovative and advance technologies necessary to explore for and produce oil and natural gas, both offshore and onshore, from non-conventional sources.

Thank you,

Maggi Young
Regulatory Affairs | Federal
Chesapeake Energy Corporation
Office: 405-935-4043
Mobile: 717-439-6337
Fax: 405-849-4043
Email: maggi.young@chk.com



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To: Downing, Donna[Downing.Donna@epa.gov]
From: Martinez, Maria
Sent: Thur 4/13/2017 9:55:05 PM
Subject: RE: WOTUS - 2 Workgroup

It is just heavenly in Region 6...compared to the intensity in D.C.

From: Downing, Donna
Sent: Thursday, April 13, 2017 4:35 PM
To: Martinez, Maria <Martinez.Maria@epa.gov>
Subject: RE: WOTUS - 2 Workgroup

Will do. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Glad both Alison and you are members!

How's life in Region 6? Busy here, as you can imagine!

Donna

From: Martinez, Maria
Sent: Thursday, April 13, 2017 5:34 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS - 2 Workgroup

Donna,

Region 6 would like to continue our participation in the WOTUS-2 workgroup. Alison Fontenot would be the staff level person representing the Region. Please include me as the manager level representative.

Thanks,

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

To: Downing, Donna[Downing.Donna@epa.gov]
From: Martinez, Maria
Sent: Thur 4/13/2017 9:33:36 PM
Subject: WOTUS - 2 Workgroup

Donna,

Region 6 would like to continue our participation in the WOTUS-2 workgroup. Alison Fontenot would be the staff level person representing the Region. Please include me as the manager level representative.

Thanks,

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]
From: Wehling, Carrie
Sent: Thur 4/13/2017 4:45:05 PM
Subject: RE: good phrasing for the federalism/ tribal consult discussions

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna

Sent: Thursday, April 13, 2017 12:31 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Bennett, Brittany <bennett.brittany@epa.gov>

Subject: RE: good phrasing for the federalism/ tribal consult discussions

Deliberative Process / Ex. 5

DOonna

From: Eisenberg, Mindy
Sent: Thursday, April 13, 2017 12:30 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: good phrasing for the federalism/ tribal consult discussions

Deliberative Process / Ex. 5

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Downing, Donna
Sent: Thursday, April 13, 2017 12:28 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie

<Wehling.Carrie@epa.gov>

Cc: Bennett, Brittany <bennett.brittany@epa.gov>

Subject: RE: good phrasing for the federalism/ tribal consult discussions

Deliberative Process / Ex. 5

Donna

From: Christensen, Damaris

Sent: Thursday, April 13, 2017 12:13 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wehling, Carrie
<Wehling.Carrie@epa.gov>

Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Hanson, Andrew
<Hanson.Andrew@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>

Subject: good phrasing for the federalism/ tribal consult discussions

Deliberative Process / Ex. 5

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 4/13/2017 2:07:10 PM
Subject: Re: can we reserve 3233 for tribal consultation calls?

Yes, the main thing is the telecom...the built in systems are better than the table phones

Sent from my iPhone

On Apr 13, 2017, at 10:05 AM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

I don't expect that the tribal consultation webinars will be heavily attended in person. I think the key is getting a room with good telecomm connections. Thoughts?

Damaris

Sent from my iPhone

On Apr 13, 2017, at 9:59 AM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:

I can confirm 2369B for May 18, 2017 from 1:30pm-3:30pm. I cannot confirm 3233 or 2369b for April 27, 2017

From: Eisenberg, Mindy
Sent: Thursday, April 13, 2017 9:55 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: can we reserve 3233 for tribal consultation calls?

We actually now have the tribal on May 18.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris

Sent: Thursday, April 13, 2017 9:09 AM

To: Penman, Crystal <Penman.Crystal@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>

Subject: Fwd: can we reserve 3233 for tribal consultation calls?

Deliberative Process / Ex. 5

There's been discussion about moving the room because our invite list has grown but I don't know where that stands. ./

Damaris

Sent from my iPhone

Begin forwarded message:

From: "Penman, Crystal" <Penman.Crystal@epa.gov>

Date: April 13, 2017 at 7:30:02 AM EDT

To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>

Subject: RE: can we reserve 3233 for tribal consultation calls?

My apologies. I can only reserve May 17th in 3233. April

27, 3233 and 2369b are not available.

From: Christensen, Damaris
Sent: Tuesday, April 11, 2017 4:14 PM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Subject: can we reserve 3233 for tribal consultation calls?

On the following dates and times – actually starting half an hour before the times below.

Thursday, April 27th 2-3:30 EDT

Wednesday, May 17 1:30-3:30 EDT

If we can't get 3233, is 2369B available?

Many thanks.

Damaris

To: Bowles, Jack[Bowles.Jack@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Ian Lyle NWRA
Sent: Wed 4/12/2017 9:25:27 PM
Subject: NWRA and CWA Meeting on April 19th
NWRA Comments on proposed definition of waters of the United States 11.14.14.pdf

Hi Jack, Andrew and Donna,

I'm reaching out to see if a representative from the National Water Resources Association (NWRA) could attend the April 19th meeting to discuss the Waters of the US rule on April 19th. NWRA is an association that represents state water associations and local government subdivisions that supply agricultural and municipal water to more than 20 million people in the Western US. As you can imagine our members are very interested in the Rule and have testified on it before both the House Transportation and Infrastructure Committee and the Senate EPW Committee in recent years. We also filed comments on the Rule back in 2014. A copy of our comments are attached for reference.

Appreciate all of your hard work and please let me know if what we can do to have a representative attend the April 19th meeting.

Thanks very much and I look forward to working with you.

Best,
Ian

Ian Lyle
Executive Vice President
National Water Resources Association
ilyle@nwra.org
202-698-0693

Personal Phone / Ex. 6

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Wed 4/12/2017 6:32:24 PM
Subject: RE: Materials for WOTUS Schedule

Hi Mindy,

I wanted to check to see if you had everything you needed for the 5 PM meeting. Also, did you need any staff support at the meeting (me, since Damaris has to leave), or are you good?

From: Eisenberg, Mindy
Sent: Wednesday, April 12, 2017 8:47 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Minoli, Kevin <Minoli.Kevin@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Materials for WOTUS Schedule

Hello All,

In preparation for today's 5:00 discussion on the rulemaking schedule and considerations, attached is a 1-pager that we will walk through as well as a table that lays out the key milestones for **Deliberative Process / Ex. 5** under best case assumptions.

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----

From: Shapiro, Mike

Sent: Monday, April 10, 2017 12:17 PM

To: Shapiro, Mike; Greenwalt, Sarah; Dravis, Samantha; Fotouhi, David; Neugeboren, Steven; Peck, Gregory; Eisenberg, Mindy; Wehling, Carrie; Nickerson, William; Campbell, Ann; Best-Wong, Benita

Subject: WOTUS Schedule

When: Wednesday, April 12, 2017 5:00 PM-5:45 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6

Poc Ann Campbell

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]
From: Campbell, Ann
Sent: Wed 4/12/2017 1:04:06 PM
Subject: Re: Today's WOTUS meeting

Of course! Also it looks like Samantha will not make it to today's meeting.

> On Apr 12, 2017, at 9:03 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:
>
> Thanks Ann
>
> Mindy Eisenberg
> Acting Director, Wetlands Division
> Office of Wetlands, Oceans and Watersheds
> U.S. Environmental Protection Agency
> 1200 Pennsylvania Ave., NW, mailcode 4502T
> Washington, DC 20460
> (202) 566-1290
> eisenberg.mindy@epa.gov
>
> -----Original Message-----
> From: Campbell, Ann
> Sent: Wednesday, April 12, 2017 9:03 AM
> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;
Peck, Gregory <Peck.Gregory@epa.gov>
> Cc: Wall, Tom <Wall.Tom@epa.gov>
> Subject: Today's WOTUS meeting
>
> Folks, **Personal Matters / Ex. 6** and Mike is at Mt Weather. He thinks he'll be back for the WOTUS
meeting but it's iffy. I just wanted to give you the heads up.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov];
Peck, Gregory[Peck.Gregory@epa.gov]
Cc: Wall, Tom[Wall.Tom@epa.gov]
From: Campbell, Ann
Sent: Wed 4/12/2017 1:02:55 PM
Subject: Today's WOTUS meeting

Folks **Personal Matters / Ex. 6** and Mike is at Mt Weather. He thinks he'll be back for the WOTUS meeting but it's iffy. I just wanted to give you the heads up.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 4/12/2017 1:40:01 AM
Subject: RE: Waters of the US on ADP tracker

Deliberative Process / Ex. 5

From: Cantilli, Robert
Sent: Tuesday, April 11, 2017 3:01 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Waters of the US on ADP tracker

Hi Rose/Donna:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Shapiro, Mike
Sent: Tue 4/11/2017 9:48:32 PM
Subject: Materials for WOTUS meeting tomorrow

Donna,

Are there going to be read ahead materials for the WOTUS meeting tomorrow? Sarah Greenwalt requested that we try to get them to her tonight, since she won't have time tomorrow morning to review.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Your meeting was forwarded

Cherry, Andrew has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Thursday, May 4, 2017 2:30 PM-3:30 PM.

Recipients

Speir, Jeffrey

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

Your meeting was forwarded

Cherry, Andrew has forwarded your meeting request to additional recipients.

Meeting

Recurring WOTUS Regional/HQ Staff workgroup meeting

Meeting Time

Occurs on Thursday every other week from 1:00 PM to 2:00 PM effective 4/20/2017 until 8/24/2017.
There are 10 more occurrences. (UTC-05:00) Eastern Time (US & Canada)

Recipients

Speir, Jeffrey

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Cantilli, Robert
Sent: Tue 4/11/2017 7:01:14 PM
Subject: Waters of the US on ADP tracker


Deliberative Process / Ex. 5

From: Livingston, Peggy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Tue 4/11/2017 5:11:23 PM
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Crazy. I told her to hold off putting our names on anything until we know what it is!

From: Downing, Donna
Sent: Tuesday, April 11, 2017 12:09 PM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: Re: DUE 4/17: WWB Participation on Waters of the US Workgroup?

 Just sent an email to check on WTF. Stay tuned.

Donn

Sent from my iPhone

On Apr 11, 2017, at 12:22 PM, Melgin, Wendy <melgin.wendy@epa.gov> wrote:

Donna, did you know this message is going out about workgroup members?

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 11:18 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Looking in the database that tracks these things, it is not showing any workgroup members....so, I'll provide both of your names just in case.

From: Melgin, Wendy
Sent: Tuesday, April 11, 2017 11:16 AM
To: Taylor, Jori <taylor.jori@epa.gov>; Swenson, Peter <swenson.peter@epa.gov>;
Gluckman, Matthew <gluckman.matthew@epa.gov>

Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Andrea Schaller and I are on the workgroup. They know all about us.

From: Taylor, Jori

Sent: Tuesday, April 11, 2017 10:20 AM

To: Swenson, Peter <swenson.peter@epa.gov>; Melgin, Wendy
<melgin.wendy@epa.gov>; Gluckman, Matthew <gluckman.matthew@epa.gov>

Subject: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Sheeler, Antonio
Sent: Tue 4/11/2017 1:25:53 PM
Subject: RE: Microsoft project

Good Morning Donna,

Did you file a Licensed software form with EZForms?

Nonresponsive Internal URL/ Ex. 6

Sincerely,
Antonio L. Sheeler
Information Technology Specialist (Project Mgmt / SharePoint SCA / Technical Support)
Policy, Communications & Resource Management Division
Office of Water, Office of Wetlands, Oceans and Watersheds
United States Environmental Protection Agency
Sheeler.antonio@epa.gov
Office: (202) 566-1567
Personal Phone / Ex. 6

-----Original Message-----

From: Downing, Donna
Sent: Tuesday, April 11, 2017 9:23 AM
To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Microsoft project

Hi Antonio --

Just as an FYI, I also asked for installation of Microsoft Project for the same rulemaking as Damaris and Rose.

Donna

-----Original Message-----

From: Sheeler, Antonio
Sent: Tuesday, April 11, 2017 5:21 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Microsoft project

We are not purchasing it per se. We are awaiting OEI to push the installs. I do not have a timeline in this.

Sincerely, Antonio Sheeler
IT Project Mgmt (App & Customer Support)

1301 Constitution Avenue NW
Mailcode: 4501T
WJC-WEST Bldg RM 7117
Washington DC 20004

(202) 566-1567

Personal Phone / Ex. 6

> On Apr 10, 2017, at 17:18, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

>

> Hi Antonio,

>

> Damaris and I both filled out the EzTech form and they were approved, but I don't know if the form authorized us to purchase Project as well? How do we go about purchasing it? Thanks! EZTech called to install it but we need to purchase it first.

>

> -----Original Message-----

> From: Christensen, Damaris

> Sent: Sunday, March 26, 2017 11:48 PM

> To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

> Subject: FW: Microsoft project

>

> Rose, Donna,

>

> I'm forwarding the whole chain in case you have questions but the short version is:

>

> 1. Cindy Barger at Army volunteered to do some gantt charts for us last week (she likes them!) 2. She is using Microsoft Project 3. So we can have access to what she puts on Sharepoint (Rose, you'd be backup for me and Donna) you need to request that EZTech puts Project on your computer 4. EZ Forms is available at [Nonresponsive Internal URL/ Ex. 6](#) via Licensed Software. It went through for me without a license number and I used Sharon Gonder as my supervisor since she will apparently be the one approving.

>

> Damaris

>

> PS - Cindy is having some access problems with Sharepoint but her IT folk and ours are connecting.

>

> -----Original Message-----

> From: Sheeler, Antonio

> Sent: Friday, March 24, 2017 11:26 AM

> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

> Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

> Subject: RE: Microsoft project

>

> Yes. We are requesting the software.

> See attached message from Sharon Gonder

>

> Sincerely,

> Antonio L. Sheeler

> Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov

> Office: (202) 566-1567

>

Personal Phone / Ex. 6

>

> -----Original Message-----

> From: Eisenberg, Mindy

> Sent: Friday, March 24, 2017 11:21 AM

> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>

> Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
> Subject: RE: Microsoft project
>
> Since we don't have a license number can I leave that blank on the form?
>
> Mindy Eisenberg
> Acting Director, Wetlands Division
> Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
> 1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
> (202) 566-1290
> eisenberg.mindy@epa.gov
>
> -----Original Message-----
> From: Sheeler, Antonio
> Sent: Friday, March 24, 2017 11:20 AM
> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
> Subject: RE: Microsoft project
>
> It is Licensed software.
>
> Sincerely,
> Antonio L. Sheeler
> Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans
and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov
> Office: (202) 566-1567
> **Personal Phone / Ex. 6**
>
> -----Original Message-----
> From: Eisenberg, Mindy
> Sent: Friday, March 24, 2017 11:15 AM
> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
> Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
> Subject: RE: Microsoft project
>
> Is this considered shareware or licensed?
>
> Mindy Eisenberg
> Acting Director, Wetlands Division
> Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
> 1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
> (202) 566-1290
> eisenberg.mindy@epa.gov
>
> -----Original Message-----
> From: Sheeler, Antonio
> Sent: Friday, March 24, 2017 10:10 AM
> To: Christensen, Damaris <Christensen.Damaris@epa.gov>
> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> Subject: RE: Microsoft project
> Importance: High
>
> Each person needs to place their own requests.
>
> Sincerely,

> Antonio L. Sheeler
> Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans
and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov
> Office: (202) 566-1567

> **Personal Phone / Ex. 6**

> -----Original Message-----

> From: Christensen, Damaris
> Sent: Friday, March 24, 2017 10:09 AM
> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> Subject: Re: Microsoft project
>

> Got it, thanks. Mindy, rose, Donna and I will all need access. Do we each need to fill out that form or
can I do it for everybody?

>

> I have a few meetings coming up but will try to get this filled out early this afternoon.

>

> Damaris

>

> Sent from my iPhone

>

>> On Mar 24, 2017, at 9:50 AM, Sheeler, Antonio <Sheeler.Antonio@epa.gov> wrote:

>>

>> Damaris,

>>

>> Did you get the response from Sharon Gonder stating that you would need to make your request for
Microsoft Project via EZ Forms?

>> EZ Forms is available at; <https://usepa.sharepoint.com/sites/EZForms/SitePages/Home.aspx> via
Licensed Software.

>>

>>

>> Sincerely,

>> Antonio L. Sheeler

>> Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN
>> Mgr / Technical Support) Policy, Communications & Resource Management
>> Division Office of Water, Office of Wetlands, Oceans and Watersheds
>> United States Environmental Protection Agency Sheeler.antonio@epa.gov
>> Office: (202) 566-1567

>> **Personal Phone / Ex. 6**

>>

>> -----Original Message-----

>> From: Christensen, Damaris
>> Sent: Friday, March 24, 2017 9:23 AM
>> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
>> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
>> Subject: Re: Microsoft project
>>

>> Ok great. The army corps can use Microsoft project and it would be great to be able to coordinate with
them as we plan the WOTUS rule.

>>

>> Damaris

>>

>> Sent from my iPhone

>>

>>> On Mar 24, 2017, at 9:21 AM, Sheeler, Antonio <Sheeler.Antonio@epa.gov> wrote:
>>>
>>> Good Morning Damaris,
>>>
>>> I do know that in the past that Microsoft Project has been purchased and used however it was never used widely.
>>> I will check with the PMO so that they can check with OEI to see if they are planning to make it available and if it will work along with our Office365 Suite.
>>>
>>> Given that we were just upgraded to Office365/Office2016 and that we
>>> are nearing the rollout of Windows10 there may be some hesitation Required unless it can be incorporated along with the Office365 suite.
>>>
>>> Sincerely,
>>> Antonio L. Sheeler
>>> Information Technology Specialist (Project Mgmt / SharePoint SCA /
>>> LAN Mgr / Technical Support) Policy, Communications & Resource
>>> Management Division Office of Water, Office of Wetlands, Oceans and
>>> Watersheds United States Environmental Protection Agency
>>> Sheeler.antonio@epa.gov
>>> Office: (202) 566-1567
>>> **Personal Phone / Ex. 6**
>>>
>>> -----Original Message-----
>>> From: Christensen, Damaris
>>> Sent: Friday, March 24, 2017 8:50 AM
>>> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
>>> Subject: Microsoft project
>>>
>>> Antonio, do we have access to Microsoft project here at EPA? If so how would we go about getting it in our computers?
>>>
>>> Damaris
>>>
>>> Sent from my iPhone

From: Schafer, Jeannette
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Bennett, Brittany
Sent: Mon 4/10/2017 4:43:38 PM
Subject: RE: WOTUS Federalism Meeting

Donna – I don't have a copy of the invitation letter. What date and time was decided for the meeting? I'm not sure if the room Ann mentioned is the same room, but I would be surprised if she were recommending a different conference room. I believe 3530 is the largest on the floor, besides the Green Room.

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Downing, Donna
Sent: Monday, April 10, 2017 12:28 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: WOTUS Federalism Meeting

Brittany reserved a room for the federalism meeting, but I'm not sure if it's the one Ann's referring to. We should also check and verify that the room is reserved for the final date/time set in the invitation letter.

Brittany?

Donna

From: Eisenberg, Mindy
Sent: Monday, April 10, 2017 12:06 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: WOTUS Federalism Meeting

Can't remember if the 3rd floor north conference room was booked by Brittany or not.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Campbell, Ann
Sent: Monday, April 10, 2017 12:04 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>
Subject: WOTUS Federalism Meeting

Gentlemen— emailing you both because I'm not sure who may have access but am hoping someone can reserve the large 3rd floor conference room located in the corner between OP and OCIR. Would that be possible?

Thank you,
Ann

From: Threet, Derek
Sent: Monday, April 10, 2017 10:10 AM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>
Subject: RE: WOTUS letter - signature process

Attached is a scanned copy of the signed WOTUS letter.

Please let me know if you have any concerns.

Thanks.

Derek

Derek Jason Threet, Special Assistant

Office of the Administrator (OW, OECA, OCFO, OEI and OIG)

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, N.W.

Washington, D.C. 20004

Telephone: (202) 564-1409

Personal Phone / Ex. 6

From: Burden, Susan
Sent: Friday, April 07, 2017 4:01 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>
Subject: RE: WOTUS letter - signature process

Hi Lincoln,

I'm just about to leave for the evening. I'm assuming that the letter will not be signed this evening since I haven't heard from you. If it gets signed before 5:30pm, please contact Brian Hope (564-8212) and he can make the PDF and send it out to folks. Otherwise, we'll pick this up on Monday morning. Have a great weekend!

Thanks,

Susan

Susan Burden, Ph.D.

Special Assistant (ORD, OCSPP, OCHP, SAB)

Office of the Administrator

U.S. Environmental Protection Agency

Office: (202) 564-6308

Personal Phone / Ex. 6

From: Hanson, Andrew
Sent: Friday, April 07, 2017 12:27 PM
To: Burden, Susan <Burden.Susan@epa.gov>
Subject: FW: WOTUS letter - signature process

See below....guess all we need now is the sig!

From: Eisenberg, Mindy
Sent: Friday, April 07, 2017 12:26 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: RE: WOTUS letter - signature process

I formatted the letter to accommodate Agency letter head and put it in Times Roman 12 font which is standard for all correspondence, so there is more text that carries onto the second page so it doesn't look cut off.

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Ferguson, Lincoln

Sent: Friday, April 07, 2017 12:22 PM

To: Hanson, Andrew <Hanson.Andrew@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;

Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine

<Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>

Subject: RE: WOTUS letter - signature process

This version has been approved by the Administrator but needs to be condensed to all fit on one page. Can somebody assist in doing that?

Once that is done we can have it ready for him to sign.

From: Hanson, Andrew

Sent: Thursday, April 6, 2017 10:08 PM

To: Goodin, John <Goodin.John@epa.gov>

Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;

Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Ruf, Christine

<Ruf.Christine@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Ferguson, Lincoln

<ferguson.lincoln@epa.gov>

Subject: Re: WOTUS letter - signature process

Hi John,

Please keep in mind that the scanned digital version we (OCIR) send to our targeted Big 10 reps -- attached to an electronic scheduler -- will be the primary (most effective and expedient) means of ensuring the invitation letter gets to the right intergov association participants, incl. the water association reps. The greeting should be "Dear Intergovernmental Association Colleague".

The signed/mailed hard copy letters referred to below will be, as a practical matter, a superfluous part of the actual notification process.

EOn Apr 6, 2017, at 5:41 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Folks—below is where the process stands for sending out the Federalism invite letter tomorrow.

Jack—Brian Hope indicated he'd circulate the pdf since you'll want to send digitally as well.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks

John

From: Knapp, Kristien

Sent: Thursday, April 06, 2017 5:28 PM

To: Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>;

Ruf, Christine <Ruf.Christine@epa.gov>

Subject: WOTUS letter - signature process

Because we all have a part to play and this is urgent, I am setting out the plan we've all just talked about for getting the WOTUS letter signed tomorrow morning.

1. Tonight or first thing tomorrow morning, OW will create a control in CMS for the letter, and then forward to OEX.
2. At some point tonight or tomorrow morning, Lincoln will send us all a final version of the letter, once it has been approved by the Administrator.
3. Once we have the final letter, OEX (Brian and Cynthia) will prepare the letter for the Administrator's signature.
4. OEX will deliver the letters to Susan Burden, who will take them to the Administrator to sign.
5. Once signed, Susan will PDF, and send to Lincoln for OPA purposes.
6. Susan will return the signed letters to OEX for recordkeeping, close out, and mailing.

Lincoln, please keep us all posted on your end, especially if you have timing needs so that we can help you meet them. Susan Burden will be your main point of contact in the Administrator's Office tomorrow. She will make sure this gets signed and follows all the necessary process points.

Please flag any missing points or questions.

From: Williams, Ann
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: McDavit, Michael W.
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: McDavit, Michael W.
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Schaller, Andrea
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Schaller, Andrea
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: McCarthy, Julia
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: McCarthy, Julia
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

From: Auerbach, Daniel
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

From: Auerbach, Daniel
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Lapp, Jeffrey
Sent: Fri 4/7/2017 4:33:50 PM
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

Sent from my iPhone

On Apr 7, 2017, at 12:31 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Personal Matters / Ex. 6

Donna

-----Original Appointment-----

From: Lapp, Jeffrey

Sent: Friday, April 07, 2017 12:31 PM

To: Downing, Donna

Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW

To: Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Fri 4/7/2017 4:25:09 PM
Subject: RE: western group

Hi Donna; I think I need to read this again to see

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We need to figure out what that means, for example

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Personal Matters / Ex. 6

If we end up

having the national meeting, I'll see you in SF; maybe a good time to get the western group together!

From: Downing, Donna
Sent: Friday, April 07, 2017 11:13 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: western group

Hiya Wendy –

I just have the Scalia opinion published as part of the Supreme Court's response in *Rapanos*.
I'm attaching that...

Personal Matters / Ex. 6

Donna

From: Melgin, Wendy
Sent: Friday, April 07, 2017 12:08 PM
To: McCarthy, Julia <McCarthy.Julia@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: RE: western group

Donna, do you have a copy of just Scalia's brief?

From: McCarthy, Julia
Sent: Friday, April 07, 2017 9:05 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: western group

Hey Donna,

Just to reiterate what I said yesterday on the call, I think it's very important that we set up a group to consider **Deliberative Process / Ex. 5**. This should definitely include Regions 7,8,9,10 and Wendy, of course. It also may be useful to bring in the likes of Bob Lichvar from ERDC and Bill Kepner from ORD to provide us with some technical input on how **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Additionally, I assume **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Cheers,
Julia

From: Melgin, Wendy
Sent: Thursday, April 6, 2017 12:10 PM
To: McCarthy, Julia <McCarthy.Julia@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: western group

Please include me in this group when formed even though I'm in R5! Most of my hydro experience and background is from the west. Many things to consider when determining **Deliberative Process / Ex. 5** Hyporheic processes for example. This is a record runoff year in Nevada and other places so I hope photos are being taken to document.

To: McCarthy, Julia[McCarthy.Julia@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Fri 4/7/2017 4:08:20 PM
Subject: RE: western group

Donna, do you have a copy of just Scalia's brief?

From: McCarthy, Julia
Sent: Friday, April 07, 2017 9:05 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: western group

Hey Donna,

Just to reiterate what I said yesterday on the call, I think it's very important that we set up a group to consider **Deliberative Process / Ex. 5** This should definitely include Regions 7,8,9,10 and Wendy, of course. It also may be useful to bring in the likes of Bob Lichvar from ERDC and Bill Kepner from ORD to provide us with some technical input on how to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Additionally, I assume **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Cheers,
Julia

From: Melgin, Wendy
Sent: Thursday, April 6, 2017 12:10 PM
To: McCarthy, Julia <McCarthy.Julia@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: western group

Please include me in this group when formed even though I'm in R5! Most of my hydro experience and background is from the west. Many things to consider when determining

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Hyporheic processes for example. This is a record runoff year in Nevada and other places so I hope photos are being taken to document.

From: Peterson, Carol
Importance: Normal
Subject: help w/WOTUS
Start Date/Time: Wed 4/12/2017 5:00:00 PM
End Date/Time: Wed 4/12/2017 5:30:00 PM

Mindy,

I'm meeting w/Jim Mon. afternoon to get his OK.

To: Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
From: Hewitt, Julie
Sent: Wed 4/5/2017 12:01:39 PM
Subject: Mike's 10am WOTUS meeting

Hi Crystal,

Would you please add me to the standing 10am meeting on Mike's calendar on WOTUS?

Thank-you,

Julie

Julie Hewitt

Associate Director for Economics

Engineering and Analysis Division

Office of Science & Technology, Office of Water

U.S. Environmental Protection Agency

EPA West Building

1200 Pennsylvania Avenue, N.W.

Room 6233-H and Mail Code 4303T
Washington, DC 20460

(202) 566-1031

(202) 566-1053 fax

Hewitt.Julie@epa.gov

<http://water.epa.gov/scitech/wastetech/guide/>

From: Microsoft Outlook
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

Your meeting was forwarded

Swackhammer, J-Troy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, April 5, 2017 11:00 AM-12:00 PM.

Recipients

Clark, Becki

Principe, Vanessa

Jennings, Kim

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 4/4/2017 8:02:53 PM
Subject: Automatic reply: Revised agenda for Wednesday's 10am meeting on WOTUS

I will be out of the office on Tuesday, April 4, 2017 and will return on Wednesday, April 5, 2017. If you need immediate attention, please contact Crystal Edwards @ 202-564-1661.

To: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Goodin, John
Sent: Tue 4/4/2017 7:07:51 PM
Subject: RE: For quick review: draft agenda for tomorrow's 10am WOTUS meeting

Couple thoughts....give me a few minutes

From: Downing, Donna
Sent: Tuesday, April 04, 2017 2:45 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: draft agenda for tomorrow's 10am WOTUS meeting

Hi Mindy—

Attached please find a revised agenda for tomorrow morning's 10am leadership meeting on WOTUS, reflecting **Deliberative Process / Ex. 5** I'm also appending below the agenda as text for those operating on phones.

Please let me know what edits you'd like, and I'll finalize and send to Crystal Penman. Thanks!

Donna

AGENDA
WOTUS MEETING
Wednesday, April 5, 2017
10:00-10:45am

WJC EAST 3233

Telecom: **Nonresponsive Conference Code/ Ex. 6**

1. Introductions (3 minutes)

2. Implications of **Deliberative Process / Ex. 5** (40 minutes)

- a.
- b.
- c.
- d.
- e.

Deliberative Process / Ex. 5

3. Next Steps (2 minutes), **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Tue 4/4/2017 3:59:21 PM
Subject: RE: WOTUS for WDD Call

Thanks so much.

-Kate

From: Downing, Donna
Sent: Tuesday, April 04, 2017 10:58 AM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: WOTUS for WDD Call

Will do, as soon as I'm back at my desk.

Donna

Sent from my iPhone

On Apr 4, 2017, at 11:34 AM, Balasa, Kate <balasa.kate@epa.gov> wrote:

Hi Donna,

Is there any chance I can call in to your Thursday call? It would just be for the sake of getting up to speed on things. If so, please forward me the invite.

Thanks for your consideration.

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Sent: Monday, April 03, 2017 4:57 PM
To: Balasa, Kate <balasa.kate@epa.gov>
Subject: RE: WOTUS for WDD Call

Hi Kate –

The call's at 1pm, but I understand John and you have had a subsequent email conversation about having a separate WDD meeting. Please let me know how I can be of help; I'll check with John too.

Donna

From: Balasa, Kate
Sent: Monday, April 03, 2017 11:24 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: WOTUS for WDD Call

Good morning, Donna,

What time do you currently have the WOTUS call scheduled for this Thursday? Per John's email below, I am trying to determine if it might also work for the WDDs to join the call. If not, I will look for another time.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John

Sent: Monday, April 03, 2017 8:18 AM

To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Tue 4/4/2017 3:39:21 PM
Subject: RE: Sharepoint new sub directory

Here's the link for today's meeting:

Nonresponsive Internal URL/ Ex. 6

And the overall folder for meeting materials:

Nonresponsive Internal URL/ Ex. 6

I've added some of the other OECA folks and Troy (everyone else was already on for EPA). Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 I recall when we had this discussion last month, I don't know if there was if Deliberative Process / Ex. 5

-----Original Message-----

From: Downing, Donna
Sent: Tuesday, April 04, 2017 11:20 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Sharepoint new sub directory

Yes, that would be a good place to put the "Materials for Interagency Staff Meetings" folder. The problem is that everybody seems to have different iterations of rule text, schedule, etc., and asked that we have a place where they can go for materials for discussion at, for example, the April 4th meeting. Many of the materials also will be elsewhere on Sharepoint but this was viewed as limiting confusion.

I'm attaching here the agenda, latest rule text, and latest timeline(s) for the April 4th meeting. Access should be everybody who's on the meeting invitation. I think these are all the materials for this afternoon's meeting.

Could you set these up with appropriate access? Also it'd be great if you could send me a Sharepoint link to the actual subdirectory and I'll add it to the meeting invitation and/or email it to everybody. I'm not sure how much you're working today, but if you're playing with small relatives don't worry about it (I can either find time between meetings to upload these or email them to folks).

Off to my next meeting! This management thing is full of meetings.

Thanks!

Donna

-----Original Message-----

From: Kwok, Rose
Sent: Tuesday, April 04, 2017 11:09 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Sharepoint new sub directory

Hey Donna - there was a subdirectory for Interagency Coordination:

Nonresponsive Internal URL/ Ex. 6

I'm on a call right now but will add a folder for the April 4 meeting

-----Original Message-----

From: Downing, Donna

Sent: Tuesday, April 04, 2017 10:57 AM

To: Kwok, Rose <Kwok.Rose@epa.gov>

Subject: Sharepoint new sub directory

Hi Rose--

Could you set up on our interagency Wotus-2 Sharepoint a directory for Interagency Staff Meeting Materials, and then subdirectories with specific dates. Last week folks asked for a depository for meeting stuff, even if it duplicates materials on the sharepoint elsewhere, so that everybody knows they're looking at the version being discussed in the meeting. I'll shortly have a meeting agenda and the latest rule text that could go under 4 April 2017's staff directory.

I'm in the weekly OWOW mtg but should be out shortly if you have questions. Thanks!

Donna

Sent from my iPhone

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 4/4/2017 3:09:13 PM
Subject: RE: Sharepoint new sub directory

Hey Donna - there was a subdirectory for Interagency Coordination:

Nonresponsive Internal URL/ Ex. 6

I'm on a call right now but will add a folder for the April 4 meeting

-----Original Message-----

From: Downing, Donna
Sent: Tuesday, April 04, 2017 10:57 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Sharepoint new sub directory

Hi Rose--

Could you set up on our interagency Wotus-2 Sharepoint a directory for Interagency Staff Meeting Materials, and then subdirectories with specific dates. Last week folks asked for a depository for meeting stuff, even if it duplicates materials on the sharepoint elsewhere, so that everybody knows they're looking at the version being discussed in the meeting. I'll shortly have a meeting agenda and the latest rule text that could go under 4 April 2017's staff directory.

I'm in the weekly OWOW mtg but should be out shortly if you have questions. Thanks!

Donna

Sent from my iPhone

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

Not sure if I can call in since I'll be on leave - but I don't see a call-in. I think you intended one, since this will be with the Regions?

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Your meeting was forwarded

Keating, Jim has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency meeting

Meeting Time

Tuesday, April 4, 2017 1:00 PM-2:00 PM.

Recipients

Ludwig-Monty, Sarah

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Your meeting was forwarded

Cherry, Andrew has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency meeting

Meeting Time

Tuesday, April 4, 2017 1:00 PM-2:00 PM.

Recipients

Speir, Jeffrey

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Hudiburgh, Gary
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Keating, Jim
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Flannery-Keith, Erin
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Tentative: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Frazer, Brian
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Swackhammer, J-Troy
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Mon 4/3/2017 9:59:06 PM
Subject: RE: WOTUS for WDD Call

Hi Donna,

Thanks for your email. Yes, I was mixed up. So sorry for any confusion. I am working to see what dates might work for the WDDs during the week of April 17.

Thanks much,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Sent: Monday, April 03, 2017 4:57 PM
To: Balasa, Kate <balasa.kate@epa.gov>
Subject: RE: WOTUS for WDD Call

Hi Kate –

The call's at 1pm, but I understand John and you have had a subsequent email conversation about having a separate WDD meeting. Please let me know how I can be of help; I'll check with John too.

Donna

From: Balasa, Kate
Sent: Monday, April 03, 2017 11:24 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: WOTUS for WDD Call

Good morning, Donna,

What time do you currently have the WOTUS call scheduled for this Thursday? Per John's email below, I am trying to determine if it might also work for the WDDs to join the call. If not, I will look for another time.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John
Sent: Monday, April 03, 2017 8:18 AM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>

Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

To: Downing, Donna[Downing.Donna@epa.gov]
From: Flannery-Keith, Erin
Sent: Mon 4/3/2017 9:52:57 PM
Subject: Automatic reply: Responding to CWR-related 10am meeting requests

I am out of the office on work travel until Friday, April 7. I will be checking email and will respond as soon as possible. Thank you.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Hudiburgh, Gary
Sent: Mon 4/3/2017 9:52:57 PM
Subject: Automatic reply: Responding to CWR-related 10am meeting requests

I will be out of the office on Friday, March 31 - Monday, April 3. I will respond to your message when I return.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Mon 4/3/2017 3:24:24 PM
Subject: FW: WOTUS for WDD Call

Good morning, Donna,

What time do you currently have the WOTUS call scheduled for this Thursday? Per John's email below, I am trying to determine if it might also work for the WDDs to join the call. If not, I will look for another time.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John
Sent: Monday, April 03, 2017 8:18 AM
To: Balasa, Kate <balasa.kate@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm

guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

From: Schafer, Jeannette
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Schmauder, Craig R SES (US)

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Declined: [Non-DoD Source] FW: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

Your meeting was forwarded

Peck, Gregory has forwarded your meeting request to additional recipients.

Meeting

Discussion of latest draft WOTUS-2 rule text

Meeting Time

Monday, April 3, 2017 1:00 PM-2:00 PM.

Recipients

Schmauder, Craig R SES (US)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: McDavit, Michael W.
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Shamet, Stefania
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: McCarthy, Julia
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

This time will work for me after all...

From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Somerville, Eric
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

No call in number?

From: Somerville, Eric
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Fontenot, Alison
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

My be late due to giving a presentation at the Tribal Summit offsite that morning, but will try to participate. Thanks!

From: Livingston, Peggy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Melgin, Wendy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Szalay, Endre
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

From: Flannery-Keith, Erin
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Dean, Heather
Sent: Fri 3/31/2017 7:40:13 PM
Subject: Automatic reply: Initial meeting of informal staff WOTUS-2 workgroup

I will be out of the office until Monday, 3 April.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Schaller, Andrea
Sent: Fri 3/31/2017 7:40:14 PM
Subject: Automatic reply: Initial meeting of informal staff WOTUS-2 workgroup

I am out on travel with limited email access. I will respond to your email when I return 4/10.

Thank you,

Andrea

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Hewitt, Julie
Sent: Thur 3/30/2017 9:33:38 PM
Subject: Weekly WOTUS econ meetings

Just a heads up that I plan to use 7301 WJC West, because my conference rooms are behind locked doors, and we are supporting you all . . . in case anyone complains to you about an interloper. ☺

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/30/2017 6:31:08 PM
Subject: Re: Clarity on request for project

Nope, I didn't see it but I guess it is added later. Sharon said it was ok.

Damaris

Sent from my iPhone

On Mar 30, 2017, at 2:26 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

I've entered my request (included Mindy as the Supervisor – copied her here as an FYI), but I did not see where to include the Security Information Officer – did you?

From: Christensen, Damaris
Sent: Monday, March 27, 2017 12:07 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Clarity on request for project

FYI

Sent from my iPhone

Begin forwarded message:

From: "Gonder, Sharon" <Gonder.Sharon@epa.gov>
Date: March 27, 2017 at 12:05:06 PM EDT
To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Cc: "Sheeler, Antonio" <Sheeler.Antonio@epa.gov>, "Mansfield, Marshall" <Mansfield.Marshall@epa.gov>
Subject: RE: New Licensed Software request created.

Hi Damaris- Can you edit your request and route it to your supervisor for approval? Your current submission has me as the supervisor. Please also include Marshall Mansfield as the Security Information Officer.

Thanks

Sharon Gonder | *Director*

Project Management Office

Office of Water | U.S. Environmental Protection Agency

(202) 564-5256 | gonder.sharon@epa.gov

From: EZ Forms [<mailto:no-reply@sharepointonline.com>]

Sent: Sunday, March 26, 2017 11:31 PM

To: Gonder, Sharon <Gonder.Sharon@epa.gov>

Cc: SharePoint Admin <SharePointAdmin@usepa.onmicrosoft.com>

Subject: New Licensed Software request created.

Hello,

A new request for Licensed Software is awaiting your approval.

Request Info:

Requestor: Christensen, Damaris

Request Date: 2017-03-26T04:00:00Z

Additional Info:

Justification - This software is required to coordinate with another agency issuing a joint, tight-deadline, high profile rulemaking to redefine waters of the US

Software Title - Microsoft Project

Product Key - ---

[Approve/Deny Request](#)

[Approve/Deny Request \(508 View\)](#)

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Kwok, Rose
Sent: Thur 3/30/2017 6:26:24 PM
Subject: RE: Clarity on request for project

I've entered my request (included Mindy as the Supervisor – copied her here as an FYI), but I did not see where to include the Security Information Officer – did you?

From: Christensen, Damaris
Sent: Monday, March 27, 2017 12:07 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Clarity on request for project

FYI

Sent from my iPhone

Begin forwarded message:

From: "Gonder, Sharon" <Gonder.Sharon@epa.gov>
Date: March 27, 2017 at 12:05:06 PM EDT
To: "Christensen, Damaris" <Christensen.Damaris@epa.gov>
Cc: "Sheeler, Antonio" <Sheeler.Antonio@epa.gov>, "Mansfield, Marshall" <Mansfield.Marshall@epa.gov>
Subject: RE: New Licensed Software request created.

Hi Damaris- Can you edit your request and route it to your supervisor for approval? Your current submission has me as the supervisor. Please also include Marshall Mansfield as the Security Information Officer.

Thanks

Sharon Gonder | *Director*

Project Management Office

Office of Water | U.S. Environmental Protection Agency

(202) 564-5256 | gonder.sharon@epa.gov

From: EZ Forms [<mailto:no-reply@sharepointonline.com>]
Sent: Sunday, March 26, 2017 11:31 PM
To: Gonder, Sharon <Gonder.Sharon@epa.gov>
Cc: SharePoint Admin <SharePointAdmin@usepa.onmicrosoft.com>
Subject: New Licensed Software request created.

Hello,

A new request for Licensed Software is awaiting your approval.

Request Info:

Requestor: Christensen, Damaris

Request Date: 2017-03-26T04:00:00Z

Additional Info:

Justification - This software is required to coordinate with another agency issuing a joint, tight-deadline, high profile rulemaking to redefine waters of the US

Software Title - Microsoft Project

Product Key - ---

[Approve/Deny Request](#)

[Approve/Deny Request \(508 View\)](#)

From: Christensen, Damaris
Location: 3233 WJCE (OW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Microsoft Outlook
Location: 3233 WJCE (OW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

Your meeting was forwarded

Swackhammer, J-Troy has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-related 10am meeting requests

Meeting Time

Wednesday, March 29, 2017 11:00 AM-12:00 PM.

Recipients

Principe, Vanessa

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
From: Peck, Gregory
Sent: Tue 3/28/2017 9:15:39 PM
Subject: Re: For review & forwarding: draft agenda and latest draft WOTUS rule text

Just wondering if

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, March 28, 2017 5:11:08 PM
To: Peck, Gregory
Subject: RE: For review & forwarding: draft agenda and latest draft WOTUS rule text

Which part of item 2?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If we're going to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Happy to discuss; I'm lurking here at my phone 566-1367.

How's life in OW-ville? Busy, here.

Donna

From: Peck, Gregory
Sent: Tuesday, March 28, 2017 5:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: For review & forwarding: draft agenda and latest draft WOTUS rule text

Donna - what is item #2 about on the draft agenda?

Thanks

From: Downing, Donna
Sent: Tuesday, March 28, 2017 4:31:13 PM
To: Campbell, Ann
Cc: Eisenberg, Mindy; Goodin, John; Kwok, Rose; Christensen, Damaris; Best-Wong, Benita; Peck, Gregory; Shapiro, Mike; Neugeboren, Steven; Wehling, Carrie; Kupchan, Simma; Wendelowski, Karyn; Nandi, Romell
Subject: For review & forwarding: draft agenda and latest draft WOTUS rule text

Hi Ann (with a cc to the Usuals) –

Attached please find a draft agenda for tomorrow morning's interagency Wetlands General meeting. Also attached is the latest draft rule, reflecting **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Could you review and see if the agenda and/or rule text need any tweaks before distributing to meeting attendees, and if not, pass onto Crystal?

Thanks! Please let me know if you have any questions or suggestions.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 3/28/2017 9:14:12 PM
Subject: Re: People on Wednesday WOTUS meetings

Yeah - from talking to Troy the **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Anyway if I were in his
(programs) shoes I'd want to at least eavesdrop on what kinds of things were coming up.

Sent from my iPhone

> On Mar 28, 2017, at 5:11 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

>

> That's a good suggestion.

>

> Donna

>

> -----Original Message-----

> From: Christensen, Damaris

> Sent: Tuesday, March 28, 2017 5:09 PM

> To: Downing, Donna <Downing.Donna@epa.gov>

> Subject: Re: People on Wednesday WOTUS meetings

>

> One possibility is to ask the **Deliberative Process / Ex. 5** folk to just call in...

>

> Sent from my iPhone

>

>> On Mar 28, 2017, at 4:53 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

>>

>> Damaris, I think we're likely to have an agenda item at the Wednesday 11am on what coverage we need for the 10am. Just before your email went to Crystal, Mindy told me she thought **Deliberative Process / Ex. 5** didn't need representatives at the 10am Wednesday meeting since their roles are relatively minor and perhaps could be represented at the Wednesday 11am and Tuesday 11am meetings. Her concern, a valid one I think, is that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

It's growing every week. For example, Mindy asked me to bring 25 copies of the meeting agenda. It's hard to uninvite people. So, Mindy and I thought we could discuss how to ensure necessary 10am coverage with the 11am crew and see what results from the discussion.

>>

>> How's your day going? Crazy here ... hardly a new thing for WD!

>>

>> Oh, did you have any schedule/gantt suggested edits? I got none from anybody so am developing some to send with Cindy as promised. We're going to talk about **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

>>

>> Donna

>>

>> -----Original Message-----

>> From: Christensen, Damaris

>> Sent: Tuesday, March 28, 2017 12:38 PM

>> To: Penman, Crystal <Penman.Crystal@epa.gov>

>> Cc: Downing, Donna <Downing.Donna@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>

>> Subject: Re: People on Wednesday WOTUS meetings

>>

>> Thanks!
>>
>> Sent from my iPhone
>>
>>> On Mar 28, 2017, at 12:32 PM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:
>>>
>>> All added.
>>>
>>> -----Original Message-----
>>> From: Christensen, Damaris
>>> Sent: Tuesday, March 28, 2017 12:27 PM
>>> To: Penman, Crystal <Penman.Crystal@epa.gov>
>>> Cc: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
>>> Subject: People on Wednesday WOTUS meetings
>>>
>>> Crystal,
>>>
>>> Can you please add the following three people to the recurring WOTUS meeting in wednesdays?
>>>
>>>
>>> Brian d'Amico - OGWDW
>>> OLEM Acting AA: Barry Breen
>>> OLEM-OEM Office Director: Reggie Cheatham
>>>
>>> Thanks,
>>>
>>> Damaris
>>>
>>> Sent from my iPhone

To: Downing, Donna[Downing.Donna@epa.gov]
From: Peck, Gregory
Sent: Tue 3/28/2017 9:06:56 PM
Subject: Re: For review & forwarding: draft agenda and latest draft WOTUS rule text

Donna - what is item #2 about on the draft agenda?

Thanks

From: Downing, Donna
Sent: Tuesday, March 28, 2017 4:31:13 PM
To: Campbell, Ann
Cc: Eisenberg, Mindy; Goodin, John; Kwok, Rose; Christensen, Damaris; Best-Wong, Benita; Peck, Gregory; Shapiro, Mike; Neugeboren, Steven; Wehling, Carrie; Kupchan, Simma; Wendelowski, Karyn; Nandi, Romell
Subject: For review & forwarding: draft agenda and latest draft WOTUS rule text

Hi Ann (with a cc to the Usuals) –

Attached please find a draft agenda for tomorrow morning's interagency Wetlands General meeting. Also attached is the latest draft rule, reflecting **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Could you review and see if the agenda and/or rule text need any tweaks before distributing to meeting attendees, and if not, pass onto Crystal?

Thanks! Please let me know if you have any questions or suggestions.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]
From: Hudiburgh, Gary
Sent: Tue 3/28/2017 5:10:17 PM
Subject: A question regarding point sources

Donna –

Just passing this on for your reaction.

Deliberative Process / Ex. 5

Do we want to ask if **Deliberative Process / Ex. 5**

Thx

Hudi

To: Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]
From: Christensen, Damaris
Sent: Tue 3/28/2017 4:37:35 PM
Subject: Re: People on Wednesday WOTUS meetings

Thanks!

Sent from my iPhone

> On Mar 28, 2017, at 12:32 PM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:
>
> All added.
>
> -----Original Message-----
> From: Christensen, Damaris
> Sent: Tuesday, March 28, 2017 12:27 PM
> To: Penman, Crystal <Penman.Crystal@epa.gov>
> Cc: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Downing, Donna
> <Downing.Donna@epa.gov>
> Subject: People on Wednesday WOTUS meetings
>
> Crystal,
>
> Can you please add the following three people to the recurring WOTUS meeting in wednesdays?
>
>
> Brian d'Amico - OGWDW
> OLEM Acting AA: Barry Breen
> OLEM-OEM Office Director: Reggie Cheatham
>
> Thanks,
>
> Damaris
>
> Sent from my iPhone

To: Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 3/28/2017 4:26:53 PM
Subject: People on Wednesday WOTUS meetings

Crystal,

Can you please add the following three people to the recurring WOTUS meeting in wednesdays?

Brian d'Amico - OGWDW
OLEM Acting AA: Barry Breen
OLEM-OEM Office Director: Reggie Cheatham

Thanks,

Damaris

Sent from my iPhone

From: Magruder, DeMara
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 3/28/2017 3:21:34 PM
Subject: Clean Water Rule Call in Nonresponsive Conference Code/ Ex. 6

Fyi. Materials for this meeting is due nlt 3:00pm today. Thank you.

Subject: Clean Water Rule Call in Nonresponsive Conference Code/ Ex. 6
Location: 3233 WJCE

Start: Wed 3/29/2017 10:00 AM
End: Wed 3/29/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack

Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal

From: Dale, David F Jr SES CELRD CELRD (US)
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: [Non-DoD Source] Responding to CWR-related 10am meeting requests
(UNCLASSIFIED)
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Swackhammer, J-Troy
Sent: Tue 3/28/2017 2:44:59 PM
Subject: RE: WOTUS-2 Wednesday meeting?

I checked with Becky Brooks yesterday, and Barry does not have this meeting on his calendar. Could you forward me the invite?

Thx much,

Troy

From: Downing, Donna
Sent: Tuesday, March 28, 2017 9:52 AM
To: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WOTUS-2 Wednesday meeting?

Hi Troy:

Great, glad you can join us at the Tuesday meeting!

We have another meeting on Wednesday at 11, following the senior managers-level meeting held at 10am. At that 11am meeting we hear what decisions were made and necessary follow-up.

Donna

From: Swackhammer, J-Troy
Sent: Monday, March 27, 2017 1:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris

<Christensen.Damaris@epa.gov>

Subject: WOTUS-2 Wednesday meeting?

Donna and Damaris,

Is there a meeting on Wednesday for AA's or Office Directors? I plan to attend the Tuesday staff-level meeting.

Troy

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Swackhammer, J-Troy
Sent: Tue 3/28/2017 2:41:22 PM
Subject: RE: WOTUS-2 Wednesday meeting?

OK thx much, Donna.

From: Downing, Donna
Sent: Tuesday, March 28, 2017 9:52 AM
To: Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WOTUS-2 Wednesday meeting?

Hi Troy:

Great, glad you can join us at the Tuesday meeting!

We have another meeting on Wednesday at 11, following the senior managers-level meeting held at 10am. At that 11am meeting we hear what decisions were made and necessary follow-up.

Donna

From: Swackhammer, J-Troy
Sent: Monday, March 27, 2017 1:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: WOTUS-2 Wednesday meeting?

Donna and Damaris,

Is there a meeting on Wednesday for AA's or Office Directors? I plan to attend the Tuesday staff-level meeting.

Troy

Office of Water Meeting Request Form

Date Received in OW: _____

OFFICE OF WATER MEETING REQUEST FORM

FOR: Michael Shapiro _____X___ OR Benita Best-Wong __X___

Subject: Tribal Consultation Webinars for Waters of the U.S. Rule

Meeting Requested By: Rose Kwok Date: 4/20/2017

Office Director Approval: _____ Date: _____

Date Staff will be ready for this meeting by: Two Webinar Dates: 4/27/2017 and 5/18/2017

Latest date meeting can happen by: Webinars have been scheduled: 4/27/2017 and 5/18/2017

Time Needed for meeting: 20 Minutes _____ 45 Minutes _____ 1 Hour _____ Other X_____

Purpose of the meeting:

AA decision expected?

Yes _____ No X

Provide AA with information?

Yes _____ No X_____

What specifically is to be decided or presented? Why is a meeting needed?

The EPA is initiating consultation and coordination with federally-recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." EPA will be hosting two tribes-only informational webinars on April 27, 2017 from 2-3:30 PM and May 18, 2017 from 1:30-3:30 PM. We are requesting that either Mike or Benita be present for both meetings to give the welcoming remarks and kick-off the consultation process. The times and dates of the webinars have already been set. Crystal has reserved 3233 for these meetings.

Who will attend the meeting?

Mandatory Attendees (Give Full Names as listed in Outlook and Identify Office):

Michael Shapiro or Benita Best-Wong/OW; John Goodin/OW; Mindy Eisenberg/OW; Karen Gude/OW; Donna Downing/OW; Rose Kwok/OW; Damaris Christensen/OW; Brittany Bennett/OW; Simma Kupchan/OGC; Tricia Jefferson/OGC; Michael McDavit/OW

Army and Army Corps participants: Stacey Jensen (Stacey.M.Jensen@usace.army.mil); Douglas Lamont (douglas.w.lamont2.civ@mail.mil)

Optional Attendees (Give Full Names as listed in Outlook and Identify Office – please copy your own office's Special Assistant):

Sarah Greenwalt/OA; Byron Brown/OA; Kathleen Kutschenreuter/OW; Daniel Auerbach/OW; Romell

Nandi/ OW; Dona Harris/OITA
Army participant: Cindy Barger (cindy.s.barger.civ@mail.mil)

AA/DAA Conference Technology - Please check all that apply:

- **Presentation** (e.g., PowerPoint or video file(s) uploaded to computer) ☒ (we will bring the presentation and present via webinar)
- **Conference Call Line** ☒
- **VTC** _____ [VTC location(s) (i.e., Region and room number) and a VTC contact person(s) must be provided to the OW-IO Schedulers no later than **24 hours in advance** of the meeting. If known at the time the meeting request form is submitted, please provide this information below.]

Conference line to use for phone-in attendees:

Nonresponsive Conference Code/ Ex. 6

(NOTE: If your meeting will require a conference call line, please request that a conference call number be added to your meeting request form. It is recommended that you request that the OW IO scheduler use the conference call number for the appropriate OW manager being briefed, (i.e., Joel, Mike, or Ellen). If the program office chooses to use different conference call number for the meeting, the meeting POC will be responsible for opening the conference line with the appropriate PIN number.)

Person Providing Agenda for the Meeting:

Name: Rose Kwok **Phone:** 202-566-0657

Person Providing Briefing Material (if any) for the Meeting:

Name: Rose Kwok **Phone:** 202-566-0657

All meeting materials are due in BOTH hard copy and electronic copy no later than 3:00 p.m. the day before the meeting, unless the meeting is scheduled too late to allow this. Please provide one hard copy per OW principal attending.

- Your office's scheduler or SA will email all electronic copies to Crystal Penman and Ann Campbell (for Mike Shapiro) or Crystal Edwards and Ann Campbell (for Benita Best-Wong).
- Deliver hard copies to:
 - Crystal Penman: (3219 WJC East) for Mike Shapiro
 - Crystal Edwards: (3223 WJC for) for Benita Best-Wong

To: Cantilli, Robert[Cantilli.Robert@epa.gov]; Alexander, Laurie[Alexander.Laurie@epa.gov]
From: Kwok, Rose
Sent: Thur 4/20/2017 5:53:25 PM
Subject: FW: FYI tribal consultation letter distribution list
ESPrutt to Tribal Leaders 04-20-17.pdf

FYI – this is going to be sent to the via email to these folks (including an ORD group):

- EPA's Headquarters and Regional Indian Coordinators
- EPA National Tribal Caucus Members
- National Tribal Water Council Members
- ORD's National Tribal Science Council Members
- EPA's OW Tribal Coordinators, and a few key folks in AIEO
- AIEO's lists of Tribal Environmental Directors (separate email to be sent to each Region-specific list)

I had asked Donna to add you to the informal rule workgroup. I'm not sure if she has, so I'll remind her!

From: Christensen, Damaris

Sent: Thursday, April 20, 2017 1:49 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>
Subject: RE: FYI tribal consultation letter distribution list

And the tribal consultation letter is attached.

From: Christensen, Damaris
Sent: Thursday, April 20, 2017 1:45 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>
Subject: FYI tribal consultation letter distribution list

email distribution list for the tribal consultation letter will include:

- [redacted] EPA's Headquarters and Regional Indian Coordinators
- [redacted] EPA National Tribal Caucus Members
- [redacted] National Tribal Water Council Members
- [redacted] ORD's National Tribal Science Council Members
- [redacted] EPA's OW Tribal Coordinators, and a few key folks in AIEO
- [redacted] AIEO's lists of Tribal Environmental Directors (separate email to be sent to each Region-specific list)

Karen (our tribal coordinator) is also working to assemble a list of contacts from the organizations Army said were typically part of their outreach, and we'll send the letter to all groups where we can identify a POC.

Damaris



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 20, 2017

THE ADMINISTRATOR

Dear Tribal Leader:

The U.S. Environmental Protection Agency is initiating consultation and coordination with federally recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). The EPA has invited the Department of Army to participate in this consultation and coordination.

This action follows the February 28, 2017, Presidential Executive Order 13778 on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of the Congress and the states under the Constitution. It also directs the agencies to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the EO directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the Clean Water Rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the EO. Justice Scalia's *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

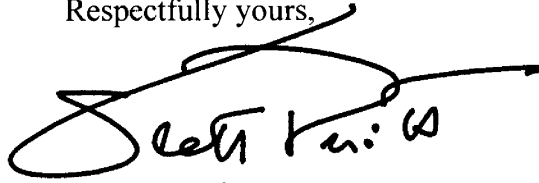
With this letter, the EPA is formally initiating consultation on the revised definition of "waters of the U.S." with federally recognized Indian tribes. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). The EPA invites you and your designated consultation representative(s) to participate. The EPA's anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017. In addition, the coordination may extend through the end of the public comment period on the second rulemaking.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on the EPA's Tribal Portal.*

The official EPA contact person for this consultation and coordination process is Karen Gude, Office of Water Tribal Program Coordinator, at (202) 564-0831 or gude.karen@epa.gov. Please do not hesitate to contact Karen should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on any regulatory action during the public comment period. The proposed rule will be published in the *Federal Register* and accessible at <https://www.regulations.gov>. I look forward to working with you on this important matter.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, stylized flourish above it.

E. Scott Pruitt

Enclosure

cc: Tribal Environmental Directors
Regional Indian Coordinators
Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

Consultation Plan

Background information on this initiative

From the 1970s through the 1990s, the majority of federal courts as well as the EPA and the Department of Army (the agencies) consistently interpreted a broad scope of Clean Water Act jurisdiction as necessary to and consistent with the Act's goals of protecting water quality. Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The Justices in the *Rapanos v. United States*, 547 U.S. 715 (2006) decision were split on how this was to be accomplished. The agencies have been working since the 2006 Supreme Court decision to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act. The 2015 Clean Water Rule, and the proposed new rulemaking effort, reflect the agencies' efforts to provide that needed clarification and predictability.

The February 28, 2017, executive order says that the EPA and the Army Corps “shall consider interpreting the term “navigable waters” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

Since the EO was issued, the agencies have taken two actions. First, we published a *Federal Register* notice on March 6, 2017, called “Intention to Review and Rescind or Revise the Clean Water Rule.” The notice announces the EPA and Army’s intention to review and rescind or revise the 2015 Clean Water Rule, consistent with Justice Scalia’s opinion. Second, at the EPA’s request, on March 6, 2017, the Department of Justice advised the Sixth Circuit Court of Appeals that the agencies intend to consider rescinding or revising the Clean Water Rule. The notice is called for by the EO and is appropriate because of the ongoing Clean Water Rule-related litigation currently before that court. These items, as well as a link to the executive order, are on the EPA’s Clean Water Rule website at www.epa.gov/cleanwaterrule.

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit stay of the 2015 rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a rulemaking to revise the definition of “waters of the U.S.” consistent with direction in the February 28, 2017, EO to interpret the term “navigable waters” in a manner consistent with the opinion of Justice Scalia in *Rapanos*.

The definition of “waters of the U.S.” affects the implementation of Clean Water Act programs on tribal lands and lands upstream of tribal waters, including section 401 tribal and state certification requirements, under which tribes can request accommodation for environmental and cultural values within a federal permit; section 402 National Pollutant Discharge Elimination System permits, which regulate discharges of pollutants that may directly or indirectly reach jurisdictional waters; section 404 permits, which regulate the discharge of dredged or fill material; section 303, which calls for water quality standards; and section 311, which requires oil spill response and prevention plans.

The Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule can be found at www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic.

The Federal Register Notice of Intention to Review and Rescind or Revise the Clean Water Rule can be found at www.federalregister.gov/documents/2017/03/06/2017-04312/intention-to-review-and-rescind-or-revise-the-clean-water-rule.

Potential impacts to tribes

The EPA understands that decisions concerning whether a water body is subject to the Clean Water Act have consequences for tribal, state and local governments and for private parties. The agencies intend the first rulemaking is to preserve the status quo. Under the second proposed rulemaking, the EPA expects that the number of waters protected under the Clean Water Act will decrease compared both to current practice and the scope of the 2015 Clean Water Rule. As a result, businesses and governments that, for example, build homes and roads may face some decreased costs of the permitting process from offsetting the effects to aquatic resources from development. Those tribes that have 401 certification authorities may find that the number of permits requiring 401 certification decreases.

The Clean Water Act is one of the nation’s most effective environmental laws, calling for the federal government, tribes and states to work together to achieve the act’s goals. While tribes may request approval from the EPA to administer their own Clean Water Act section 402 and/or Clean Water Act section 404 permit program, to date no tribes have requested approval of a tribal 402 or 404 program. As a result, the EPA issues 402 permits and the Corps issues 404 permits in Indian country, and thus the burden for processing permit applications and conducting associated analyses will generally fall on the agencies.

Opportunities for tribes to participate

The tribal consultation process table below lays out the process and timeline for government-to-government consultation and coordination. The agencies are also looking for opportunities to discuss the rulemaking at in-person meetings.

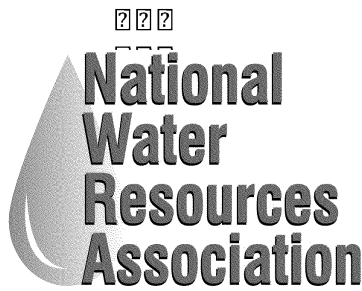
Tribes may also participate in any public review and comment process. For more information, see the EPA’s website at www.epa.gov/cleanwaterrule.

Tribes may access this letter and related consultation information via the EPA’s Tribal Consultation Opportunities Tracking System, located at tcots.epa.gov.

The combined goal for all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Tribal Consultation Process and Timeline

| | | |
|---|---|--|
| April 20, 2017 | Initiation of tribal consultation via mail and by electronic announcement | EPA Contact: Karen Gude, (202) 564-0831 |
| April 27, 2017 | Tribes-only Information Webinar | Webinar time: 2:00-3:30 Eastern Time
To register:
https://epawebconferencing.acms.com/wotus2/event/registration.html ; Call-in 1-866-299-3188, code 202-566-0657
EPA Contact: Rose Kwok, (202) 566-0657 |
| May 18, 2017 | Tribes-only Information Webinar | Webinar time: 1:30-3:30 Eastern Time
To register:
http://epawebconferencing.acms.com/cwa_wotus/event/registration.html ;
Call-in 1-866-299-3188, code 202-566-0657
EPA Contact: Rose Kwok, (202) 566-0657 |
| Public comment period | Tribes will be welcome to make additional comments and raise additional questions during the public comment period following rule proposal. | Once the rule has been proposed, EPA's website will contain information on the public comment process. |
| Additional meetings or webinars may be scheduled. | | |



Meeting Tomorrow's Challenge

2014

November 14, 2014

2014

Attn: Docket ID # [EPA-880](#)

EPA Docket Center

U.S. Environmental Protection Agency

Mailcode: 2822

1200 Pennsylvania Ave. NW

Washington, DC 20460

Submitted electronically to:

[owhocket@epa.gov](#)

2014

Re: Comments of the National Water Resources Association on the of "waters of the United States" Under the Clean Water Act 2011 880.

2014

Dear Madam or Sir:

2014

On behalf of the board of directors and members of the National Association (NWA) I write to provide comment on the Environmental (EPA) and Army Corps of Engineers (Army Corps) (collectively the definition of "waters of the United States" under the Clean Water

The NWA is a nonpartisan, nonprofit federation made up of agricultural water providers, state associations, and individuals dedicated to the enhancement of efficient management of our nation's most important water. The NWA represents a diverse group of agricultural and water providers from throughout the American West and portions of the United States. Our members provide clean water to millions of individual agricultural producers and other businesses in a manner that supports the economy and the environment.

2014

For more than eighty years the NWA has partnered with the federal government to address many of our nation's most pressing water supply needs. Our member relationships with numerous federal agencies ranging from the Department of the Interior and the Bureau of Reclamation to the EPA and the Army Corps have been actively involved in the implementation of the CWA and the Safe Drinking Water Act (SDWA). Our members value these relationships and constructive extension of our ongoing partnership with the Agency

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As EPA Administrator McCarthy stated shortly after the release of the need to make any adjustments in this, we will certainly do the opportunity to work cooperatively with EPA to help us identify while continuing to meet our environmental and water supply obligations.

As an association that represents both municipal and agricultural water users, NWRA has a unique perspective and interest in the our members support the goals and intent of the CWA and to provide constructive comments on the Agencies' proposed rule. NWRA desires the preservation of the quality of the Western Water Resource and the need for a greater level of certainty and clarity in the conservation, development, delivery and use of water. In fact, NWRA requested clarification prior to the issuance of the proposed

We greatly appreciate the efforts that the Agencies put into the proposed rule. However, the NWRA is concerned that the proposed improvements in water quality and certainly will provide greater permitting process. Rather, our members worry that the proposed confusion and hinder the ability of water users to meet future traditional and cutting edge water supply methodologies.

NWRA would like specifically comment on: (1) NWRA's endorsement comments; (2) the legal framework underlying the proposed rule; (3) federal jurisdiction; (4) the unique and diverse climatic conditions in especially those located in the arid West; (5) the significant adverse proposed rule on NWRA member's efforts to meet current and future (6) the proposed rule's impact on small businesses; (7) the deficit Connectivity Report Panel and the Science Advisory Board (SAB); (8) state and local efforts to protect water quality; (9) remaining unanswered questions associated with the proposed rule; and (10) NWRA recommendations forward.

I. NWRA Supports Efforts of Interested Groups

The NWRA is a member of the Waters Working Group (WWG), concerned water users. We endorse the comments of the WWG, the Western Urban Water Council (WUWC) and the Western Coalition of Arid (WESTCAS).

II. Legal Framework Underlying the Proposed Rule

As previously noted, the NWRA is a member of the WWG. NWRA identifies a number of key concerns about the proposed rule. The NWRA agrees with the legal analyses and findings developed to go into a detailed reiteration of them here, but we will note repeating. The Agencies do not adequately address the Supreme Court and

Congress have consistently established limits to the jurisdiction to the limits have come from the meaning and weight given to the interpreting what constitutes “waters of the United States.”

As noted in the WWG comments, though the Supreme Court has “navigable” in the statute is of “limited import,” it has emphasized give a word limited effect and quite “whatever” to give it no

We cannot agree that Congress’ separate definitional use of the “waters of the United States” constitutes a basis for reading “navigable waters” out of the statute. The term “navigable” at least the import of showing that a water body is as its authority for enacting the CWA: its traditions jurisdiction over that were or had been navigable in fact or which could so make

The Agencies’ proposed rule exceeds this authority.

III. Expansion of Jurisdiction

Despite agency statements to the contrary, it is beyond argument adopted, would expand the scope of federal jurisdiction. This was analysis of the proposal as performed by the nonpartisan Congressional and in the economic analysis accompanying the proposal. This is noted by numerous entities that are supportive of the goals of with on the ground compliance with its provisions. Simply stated

- The proposal would, for the first time, categorize all “tributary jurisdictional” by negating any opportunity to scientifically rebut for jurisdiction based on such factors as the size of the nature of its flow, the size of the waterbody is ephemeral or intermittent in nature, the distance to a traditional navigable water (TN breaks in the bed, bank and ordinary high water mark of the waterbody is natural channel, and the flow of any, of affects from tributary on downstream water quality.
- The proposal would, for the first time, categorize “all” adjacent jurisdictional by use compared to the prior reference to adjacent. The concept of adjacency will, in turn, be expanded by adding “neighboring,” which includes all “waters located within the riparian floodplain.” Riparian area will be loosely defined to include

1) 40 C.F.R. E. 401.16(a)(2)(i) “waters of the United States” (66) (U.S.C. 1362(5))

water with a surface hydrological connection to a TNW. The existence of such a connection will be based upon the judgment (BPJ) of agency personnel and can be established, the Court's holding in *SWANCO* through an examination of the ecological plant and animal communities in the area. Actual "water" not be demonstrated. The "floodplain" area, in turn, is relative to the spatial or temporal extent of high flow event versus a 100-year event.

- A new category of "other waters" is established which may jurisdictional based not on their individual impact on the TNW, but rather on the potential impact to the benefit of any NEPA type reasonably foreseeable analysis, that all waterbodies in the region or basin, which can be evaluated unit, are also impacted. There is no definition or "significance".
- All ditches are jurisdictional unless specifically exempted, and exempted are those which are excavated wholly in uplands, and have less than perennial flow or ditches that do not TNW, interstate water, the territorial seas or impoundments to EPA public statements, these exemptions are of limited many western states, for example, ditches are often used for irrigation or to municipal intakes. Hence, they connect headgate "on the stream," i.e., not in an upland. Furthermore eventually provide return flows back to the stream after use water court decree requires. Under the proposal, the ditches themselves would be treated as jurisdictional waters even though discharges into the ditch that may reach a TNW will be law.

IV. Need to Consider Unique Hydrological and Landscape of the West

For generations the image of the arid West has been iconized of the cowboy riding off into the sunset and kicking up dust resounding place in the hearts and less imaginative. The West is proud of its history and this image. But the arid nature of access, store and transport water through infrastructure of vital importance.

The importance of water supply and use in the West has been recognized for centuries. Historical data indicates that the Anasazi

constructing facilities to divert runoff for agricultural purposes as early as the eleventh century. When Spanish settlers first came to the West in the late 1500's and 1600's one of the first efforts they undertook was to establish systems called "acequias." Acequias were constructed in California, Colorado and, most extensively, in the New Mexico. Many of these acequias, many more than four centuries ago, are still in use today. In agriculture, most storied historical western figures, including William F. "Buffalo Bill" Cody and Pat Garrett, led large scale efforts to develop water supply resources in the West and New Mexico respectively. President Theodore "Teddy" Roosevelt, who is regarded as America's "Father of Conservation," also saw the importance of water in the West. In his 1901 first State of the Union Address, President Roosevelt said that the arid region (the West) is water not the land, which measures the value of the land.

It is largely thanks to the efforts of individuals like President Roosevelt that the West was known to come to be settled. The development of the West in the nineteenth century took an area that was termed the "Great American Desert" and made it agriculturally productive. Major Long, who surveyed portions of the West in 1819 and 1820, reported that the agriculturally productive regions of the world has never known. In 1823, Major Long went on to say that: "In regard to the West, I do not hesitate in giving the opinion, that it is not a desert, but a land of promise. The course of uninhabitable... the scarcity of wood and water, almost uniformly prove an insuperable obstacle in the way of settling the country."

While the picture of the West painted by Major Long has changed, the arid landscape has not. The West is still largely an arid region with many arroyos, ditches, washes, dry streambeds and ephemeral or intermittent streams. Many of these features rarely feature water in them. When it rains, the response to large storm events and oftentimes much of the water is absorbed into the ground.

Under current agency guidance many of these features have been considered or lacking a significant traditional navigable waters and are not jurisdictional. However, under the proposed rule, many of these features will be considered jurisdictional by rule. The proposed rule makes ephemeral streams and tributaries jurisdictional and also eliminates, to a large extent, the concept of water or wetland. As previously noted, this is an expansion of jurisdiction and will make constructing and maintaining vital water supply infrastructure and expensive. Give the unique nature of the West and its large jurisdictional expansion will ultimately impact the West disproportionately to other regions.

V. Significant Adverse Impacts of the Proposed Rule on Water Supply Efforts in the West

The need for water in the West is just as important today as it was in the time of the Anasazi and "Buffalo Bill" Cody. Arguably, things like climate variation

growing populations make the ability to protect waters even more important today than it was in the old west.

Recently, the importance of water in the Western U.S. was noted 2014 National Climate Assessment, which states:

“The Southwest is the hottest and driest United States, where the availability of water has defined its landscapes, history of settlement, and modern economy. Climate changes pose challenges already parched region that is expected to get hotter and, significantly drier. Increased heat and changes to rain and snow send ripple effects throughout the region’s critical agriculture sector affecting the lives and economies of 60 million people expected to increase by 15 million. Severe and sustained drought will stress water sources, already dry in many areas, forcing increasing competition among farmers, energy producers, urban dwellers, and plant and animal life for the region’s most precious

The Administration is correct to express concern about meeting water in coming decades. Our members share this concern. However, concerned that the proposed rule will make it more difficult to

In order to meet water supply and wastewater treatment needs, as well as control requirements, municipal utilities and irrigation districts must make infrastructure investments, often requiring creative and innovative approaches. Investments will include new or expanded storage reservoirs; reuse desalination plants; water collection, delivery and distribution pipelines; projects; groundwater recharge facilities; and reverse osmosis water treatment. Many of these facilities will, of necessity, be in somewhat close proximity to “waters” discussed in the current proposal. It is essential that some of which may be undertaken in direct response to the drought, fire, or other damage, do not unnecessarily trigger a federal nexus lengthy and costly permitting procedures.

The importance of the proposed rule to water users lies largely in sections 404 and 401 of the CWA. If a water feature is determined on a case-by-case basis, to be a “water of the U.S.,” the dredge provisions of section 404 and the point source permit provisions potentially triggered by any of municipal undertakings. Invoking these provisions can, in turn, implicate the need for a section 401 veto certification from the state and, more importantly, may necessitate a consuming review of the Under the National Environmental Policy Act (NEPA). Finally, the need for the issuance of federal approval trigger consultation requirements under the federal Endangered Species

A. Real World Consequences Associated with the Proposal

The previously noted “expansion” will, in turn, have negative real world without any concomitant environmental benefits. Adoption of the proposed significantly increase the time before an entity can construct or modify infrastructure; significantly increase the costs associated with the permit and potentially the operation of such infrastructure; unnecessarily increase permitting mitigation costs; and potentially even preclude the construction of the infrastructure, placing at risk the ability to timely meet environmental/recreational water needs. For example:

- To the extent waters are identified, it becomes necessary to go through the section 404 permitting process prior to undertaking any development activities. This, in turn, triggers the need for state section may also trip consultation requirements. Endangered Species Act. Perhaps most importantly, the federal nexus invokes the provision Environmental Policy Act (NEPA), another costly and time consuming involving the examination of numerous alternatives. Imposition of mitigation requirements, and exposure to costly and lengthy administrative judicial challenges. This would be true even if the project dry arroyos or washes which may periodically flow only in events. As NWRA members can attest, for any large project entails years, if not over a decade, of additional work and millions of additional ratepayer or taxpayer dollars in situations construction of necessary water, wastewater and storm water infrastructure.
- To the extent additional waters, such as all intermittent or now jurisdictional, the ability to utilize nationwide 404 permit at risk. As the length of jurisdictional waters expands, the the limitations governing qualification for nationwide status contracts.
- To the extent isolated waters, as aggregated, intermittent or even all tributaries. In the time, it will impede entities’ ability to respond to the devastating impacts of the forest fire, restoration is necessary to both restore damaged infrastructure, including essential infrastructure which may be in close proximity to jurisdictional waters, and to construct new facilities designed to hold back sediment laden water as rainfall races off of what are now impervious surfaces. Unnecessary requirements will only add to the difficulties associated with meeting these challenges.
- To the extent water supply agencies desire to maximize the resources through innovative recharge, reuse and recovery projects, involve the construction and operation of holding basins and as well as connecting canals and ditches, they will find that such “water supply” activities comparable to that available to

facilities. Hence, employment of these necessary facilities faces a hurdle.

- As more non-jurisdictional waterbodies or waterbody reaches of noted above are considered jurisdictional, additional point and nonpoint sources will need to be included in TMDL calculations. It may also be existing TMDL allocations for purposes of including within the point and nonpoint sources.

- There are many communities, primarily small towns, which employ treatment technology. They may find themselves facing new, requirements as, for the first time, they are found to be ponds or dry arroyos/washes that are now considered jurisdictional.

- As more waters are jurisdictional, state agency budgets may prove inadequate. More monitoring will need to be performed, more need to be issued, more CAFOs will need to be regulated, certification applications must be reviewed, TMDL calculations will need to be completed.

- As jurisdiction will now be established for an entire category of waters, it will be necessary for interested parties, e.g., water conservation and conservancy groups, to actively participate in, jurisdictional determination in each and every basin wherein they may do business in the future. This is the case because intent to ever engage in discharge and point source discharge that impact the particular "other water" that may have precipitated examination, once that determination is made, the entire region/ "federalized" and they will bear the consequences of such time as one of their projects is ready to proceed.

- Though EPA demands the use of BMPs to control stormwater construction of stormwater retention/detention facilities, and encourages "green infrastructure," most such activities occur in locations where stormwater naturally occurs, i.e., swales, depressions, normally dry arroyos or ephemeral streambeds, etc. In order to construct, maintain, or repair facilities, additional regulatory hurdles, and the attendant costs, will have to be overcome, as there is no stormwater control exemption.

- To the extent ditches fail to meet the rigid and narrow standards, the water therein are therefore treated as jurisdictional. Association with ditch construction, repair, maintenance and replacement will, in addition, in the arid West, as water shortages loom, a critical water supply is the "sharing" of water rights between senior and junior municipal providers on an interruptible supply, e.g., leasing

However, to implement such sharing opportunities, it is oftentimes necessary to construct new water collection and transportation infrastructure. Construction activity triggers section 404 and NEPA requirements, and the transaction becomes technically, economically, or temporally infeasible.

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B. Examples of Proposal's Impact on Agriculture ¶

NWRA's members irrigate millions of acres and are proud to grow much of the crops that feed our nation and the world. Production contributes billions of dollars to the U.S. economy each year, and the food security of millions of people around the world depends on a reliable and affordable supply of water.

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Irrigation water providers, and farmers that rely on this water, use water impoundments, canals, ditches, and drains to move water efficiently for crop production. It is mandatory that such ditches be maintained. Lack of water during critical periods can be disastrous to crops.

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Irrigation facilities such as canals, ditches, and drains are built to last in their "nature" and their "purpose." Irrigation ditches are constructed regularly maintained for the purpose of delivering irrigation water to lands. The purpose of drain ditches is to remove excess water from the lands. present only because of the application of irrigation water. Irrigation facilities cannot fairly be characterized as either streams, rivers, lake water forming natural geographical features are artificial facilities created for the purpose of irrigation and drainage. Normally, these channels would be used for the application of irrigation water to produce crops.

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We are concerned that without specific clarification and exemption, the irrigated agriculture community will find themselves combating a costly process that would hinder the efficient and responsible use of NWRA's members has directly experienced what can happen when unnecessarily extend their jurisdiction. In 2004, the Sunnyside Valley Irrigation District (SVID) was performing routine maintenance in a ditch that had meandered over the years, it was creating erosion and drain be fixed. The ditch was straightened and armored with rock reduced erosion and improved the efficiency of the ditch. SVID was a routine action that is likely performed on an almost daily basis by water providers in the West. In SVID's 100 years of existence, at no time was a Section 404 permit needed for this work. Later, a compliance with the Army Corps. The Army Corps investigated and advised that the ditch was "waters of the U.S." and therefore subject to the Corps' jurisdiction.

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The Army Corps advised SVID that the only option was to return the ditch to its previous improperly working condition, and any permit request by SVID for work was likely to be denied. Despite its lack of expertise in water, the Army Corps advised that in its opinion, the work performed by

Army Corps advised SVID that the only option was to return the ditch to its previous improperly working condition, and any permit request by SVID for work was likely to be denied. Despite its lack of expertise in water, the Army Corps advised that in its opinion, the work performed by

ditch by SVID was not necessary or justified. The Army Corps virtually all of the operation and maintenance activities that take subject Army Corps jurisdiction; meaning that even if such activities an exemption, contact must be made with the Army Corps for determination. In other cases where permits could be required, it Corps would not approve much of the regular and necessary work District to maintain its canals and ditches, and that requesting a could be hostile.

After four years of negotiation, numerous meetings and trips to meet with EPA and the Army Corps, and the issuance of the Guidance Letter, exemptions for Construction, Maintenance, and Irrigation Ditches and Maintenance of Drainage Ditches Under Section 404 Act; the Army Corps eventually advised SVID that its work on the require a permit. SVID and other water suppliers can not afford for determinations as to whether a permit is required. Many worry about the uncertainty created by the proposed rule will put them in similar to SVID's. Greater clarity in the proposed rule is needed does not happen. Experience was with a relatively small ditch; it to consider what could happen should a larger irrigation facility come jurisdiction.

The proposed rule raises numerous questions about how manmade infrastructure, both large and small, will be treated. In Idaho, an important part of the Boise Project and is used to help irrigate thousands of acres of productive agricultural land.

The New York Canal is a concrete lined canal that has the 2,800 cubic feet of water. The New York Canal initially takes water from the Boise River and transports it miles. Along its path the New York Canal provides water for and distribution systems before eventually terminating at Lowell, an off stream reservoir southwest of Nampa, Idaho. The New York Canal should it be, subject to CWA jurisdiction. However, the proposed certain amount of ambiguity and confusion. The Ag parties would attempt to consider it jurisdictional. This lack of numerous other irrigation canals and projects.

The primary goal of any rulemaking should be to clarify the jurisdiction under the CWA. Unfortunately the proposed rule in its additional uncertainty. To address this uncertainty, the Agencies should manmade irrigation canals, ditches, and drains are not navigable water the U.S., are not "tributary" to waters of the United States and jurisdiction. This approach is also consistent with Army Corps R 0702, exemptions for Construction, Maintenance, and Irrigation Drainage Ditches Under Section 404 of the Clean Water Act.

clarify their exclusion of artificial features to exempt artificially irrigated irrigation ponds.

Concern from NWRA's agricultural member is solely limited to water transmission infrastructure. There is also great concern about the proposed agricultural and conservation practices. As an example, gradient terraces on many NWRA member states reduce runoff over sloped land. This helps with erosion, retain soil and aid in water conservation efforts. It is cited as a best practice for stormwater management. However, the use of terraces have not received a specific exemption to the ambiguity over whether this "best practice" is now subject to the

If the installation and maintenance of gradient terraces becomes subject to regulation, it could have an adverse impact on many water users and could actually improve water quality. In Kansas, for example, there are some that protect over 9 million acres of land. According to the effort represents over \$1.9 billion dollars invested by landowners and agencies in this conservation effort. If this practice now falls under CWA it could inadvertently reduce the numbers of agricultural and similar conservation practices.

C. Examples of Proposal's Impact on Municipal Water Supply
Municipalities have a responsibility to meet water supply, wastewater and stormwater control needs. Meeting these requirements requires significant investments in water storage reservoirs; wastewater treatment and desalinization plants; pump-out projects; groundwater recharge facilities; and reverse osmosis water treatment plants. In addition, the construction of these facilities also require the operation, maintenance and expansion of miles and delivery and distribution pipelines.

As the demand for water continues to rise, NWRA's members are undertaking a variety of efforts. These efforts include extensive water conservation efforts as well as the reclaim and reuse of water. Reclaimed and reused water is a beneficial use that fully utilizes water resources and reduces the demand for water. The processes for reclaiming and reusing water are costly, but are becoming increasingly common in areas of the country where groundwater and surface water sources are scarce or the cost or availability of imported water are prohibitive.

Water authorities across the country are investing millions of dollars in infrastructure to utilize this drought proof water resource. Treatment distribution costs of recycled water are already high, making this marginally cost-effective in some places. Any significant increase in regulatory requirements to utilize this water and its development

Under the proposed rule, water reclamation and reuse facilities are designated “waters of the U.S.” As noted earlier, ditches that transport discharged water could also be considered a “tributary” under the categorically regulated. The proposed rule defines as a “tributary” made feature that a bed, bank, ordinary high water mark, and control water. In addition, reclamation and reuse facilities are frequently otherwise adjacent to jurisdictional water where all waters are categorized “waters of the U.S.” While the proposed rule includes an exemption for ponds used exclusively for settling basins, such reuse facilities can have characteristics of a wetland and can receive and discharge water. They are not exempt. The proposed rule’s wastewater treatment exemption and an associated water reuse facility because such facilities are not meet the requirements of the Clean Water Act. Many states have acknowledged the value of recycled water. Some states established a statewide goal (California Water Plan) of recycling 2.5 million water by 2030. In 2009, the California Water Agency was 2.5 million MAF is necessary to help meet the state. Currently, 3.5 million MAF of treated water being discharged to the ocean, and the water beneficially reused.

The proposed rule’s impact on recycled water projects of high priority, one of NWSRA’s members, the Eastern Municipal Water District (EMWD) and wastewater agency in Southern California that utilizes nearly 10 million it generates, with recycled water accounting for 30 percent of its water supply portfolio over 35,000 acre feet annually. In recent years EMWD, in federal partners at the Bureau of Reclamation, has developed 14 storage, five million gallons of groundwater storage (the system), 200 million recycled distribution water pipeline, and 19 pumping facilities. EMWD greater demand than supply for recycled water, and in response allocations for customers.

We are concerned that under the proposed rule, 10 EMWD recycled could become jurisdictional because they are located in floodplains, jurisdictional water, and likely possess a subsurface hydrologic connection becoming jurisdictional, regular maintenance and vegetation removal of ponds would require Sec. 404 permits. This added regulatory burden increase the cost of recycled water, and potentially delay further water storage ponds, but could hamper the development of this supply. Numerous agencies in the arid southwest share this scenario dilemma.

Water reclamation and reuse facilities should be expressly exempt from importance of this point is particularly evident in times of drought currently affects most western states. Developing new sources of water should be encouraged. This rule could interfere with water reuse a successful deployment of water recycling programs.

This issue was highlighted during several hearings in the U.S. House where NWRA members testified. During a June 11, 2014 House Transportation and Infrastructure Committee Hearing, then EPA Deputy Administrator Robert Perciasepe responded to questions from Congresswoman Grace Napolitano that it was not EPA's intention to regulate water recycling facilities. It is not clear if the Agencies follow through on this assertion and clearly exempt water recycling facilities and associated infrastructure.

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#### D. Examples of Proposal's Impact on Groundwater Banking

The Agencies have consistently stated that the proposed rule will not affect groundwater. However, concern remains that the proposal could inadvertently affect some groundwater banking and recharge projects. Multiple NWRA members have identified groundwater banking and recharge projects. These projects can capture water and direct effluent from municipal treatment plants and divert it to areas designed to allow incoming flows to be "banked" in shallow aquifers. Many of these facilities are located immediately adjacent to rivers. Only those specifically selected based in part on adjacency to ensure operation and to maximize water savings. However, these facilities have never been under CWA jurisdiction. Groundwater banking is an efficient water storage method that can conserve water by reducing water loss due to evaporation. The Agencies need additional clarity that the rule will not apply to groundwater, shallow groundwater, and groundwater banking and recharge projects.

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E. Impact on Water Affordability

The potential effects of the proposal's expanded jurisdiction are not limited to water recycling and groundwater recharge projects. It would also directly affect the ability to construct and maintain traditional water supply infrastructure. The proposal would capture larger areas within the CWA's jurisdiction, making it more difficult for infrastructure work to fall into the CWA's purview. Many of the water supply projects on the ground experience construction delays and cost overruns that when the CWA is triggered it is not a trivial matter. Triggering CWA jurisdiction can add a decade or more to the cost of a project, millions of dollars or more in project costs.

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Our members are very conscious of the cost of water. Providing affordable water supply is something that is of the utmost importance to the public. Water is an irreplaceable resource that is vital for health and safety. The United Nations has recognized it as a basic human right. In addition, many states have adopted measures that also recognize access to affordable water. Despite our members' best efforts, access to affordable water is not guaranteed in the United States. NWRA's members remain committed to working to ensure that we are confident that the Agencies share this commitment. Unfortunately, the current form stands to make providing affordable water supplies

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F. Proposed Rule Could Hinder Disaster Response

The 2014 National Climate Assessment states that “present a huge challenge for regional management of water resources and natural wildfire.” NWRA’s members agree that current and future drought is a huge challenge. Western communities are already suffering from the stress on finite water resources. They are also combating the frequent wildfires that strip the landscape of vegetation and the that come in the days and weeks after a wildfire. These natural disasters people, communities and water managers. Responding to, and recovering from disasters is a daunting task that NWRA’s members are dedicated to. They are concerned that the current CWA will make it more difficult to recover from, these events.

Disaster response requires the ability to act quickly and creatively. To make areas not previously jurisdictional subject to the timely and requirements triggered by the CWA. As an example the proposed exemption for stormwater runoff control facilities, such as those needed to remove debris and sediment from burn scar areas. This proposed rule in its current form will make it more difficult to deal

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To address the concerns of water users outlined in this section

- Eliminate the categorical regulation of all “interstate waters” and isolated, navigable interstate waters are not jurisdictional;
- Further clarify and expand various agricultural conservation practices exempt from CWA jurisdiction;
- Clarify that manmade irrigation canals, ditches and waters are not “waters of the U.S,” are not “tributary” to waters and not subject to CWA jurisdiction;
- Clarify that jurisdictional “impoundments” do not include manmade, facilities that lawfully appropriate and remove water from the such as a drinking water treatment system or off-pond, intake canal for a plant, or a bay for a hydro plant;
- Clarify that jurisdictional “tributaries” are limited to waters that flow to a traditional navigable water via a continuous surface;
- Clarify in the text of any final proposed changes to the regulatory status of water transfers; and
- Clarify that “adjacent” waters are limited to adjacent wetlands; the water body the Supreme Court has indicated can be categorical basis of adjacency.

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VI. ~~Small~~ Business Comments

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Our nation's economy is closely tied to agricultural production. Each year for crops exceeds more than a hundred billion dollars each year. farm employment provided more than 16 million American jobs. Agricultural production and agricultural employment is undertaken by small businesses. Small business is important to NWRA's members. We share the Business Administration Office of Advocacy that have not adequately considered the proposed rule's impact on small businesses.

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We also think it is important to note that many small irrigated businesses, would likely find it extremely difficult to deliver water to their fields if the proposed rule were implemented. Some of our member districts have thousands of acres of land but have as few as five employees. Implemented without the revisions requested, this would create a massive burden for these small districts.

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VII. Deficiencies in the Charge to the Connectivity Report Panel Board (SAB)

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A significant concern of the NWRA is tied to the manner in which it attempted to support the rulemaking proposal with the findings of the Science Advisory Board (SAB) review thereof. Though the proposal needs a sound scientific basis, the agencies have evidently science component must be framed by the language of the Act and existing Supreme Court interpretations of the Act.

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It readily appears from the content of the Connectivity Report and produced to date that the reports are treating this as a purely scientific inquiry without regard to any of the above constraints. In other words, their minds is whether there exists any quantifiable connection between the waters being examined and a TNW, be it a hydrologic connection, or a biological connection, so long as it is measureable. It is the nature of the connection is tenuous, whether the connection manifests itself in a hundred or even thousands of years, whether there is a recognizable OHWM, whether the waters in question hold implications for interstate waters, whether the nexus is established through a migratory bird, or a fish, makes no difference whether there will, or will not, be a demonstrable impact, the very foundational premise for agency authority under the goals, as listed in section 101(a), the Clean Water Act, and the Clean Air Act, the discharge of pollutants or the control of nonpoint pollution. This is from the scientific analysis as presented. Justice Kennedy's admonition

nexus must be assessed in the same way as the purposes of the Act, 248, has been ignored.

Rather, hydrology has now become the central focus of the “nexus” “state deference” language of sections 101 and 510 of the Act, intent to affirm state sovereignty over water resources, despite the Act protect the quality of navigable waters for identified designated uses the discharge of pollutants, and despite Supreme Court opinions that jurisdiction over navigable, isolated intrastate waters; (ii) expressly provide word “navigable” cannot be read out of the Act; and (iii) four must exist more than a speculative one to this substantial conflict to be found jurisdictional.

The agencies misplaced reliance on the work of the scientific community underscored in the correspondence to the Administrator from the SAB correspondence, the SAB took issue with the groundwater exclusion, expressed consternation that activities which “drain” wetlands are not jurisdictional “inclusion” of certain artificial ponds and reflecting ponds, questioned “rills” are not jurisdictional and proposed excluding any groups of waters that influence downstream waters. The SAB also proposed that “adjacent” the “basis of functional relationships,” some of which would evidently with water quality imperceptibly center on ecological functions and determinations. It is apparent from these statements that the “ch community” was fatally flawed.

Neither the scientific community nor the agencies have taken a position through regulatory action, but this proposal and the scientific response nevertheless appear to be an attempt to accomplish just that.

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VIII. State and Local Efforts to Protect Water Quality

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Our members recognize the importance of water quality and take to ensure that the water we supply and put to use is clean. This dedication extends beyond the source water and includes large increase overall environmental health. Our members are continually protect our nation’s watersheds, improve wildlife habitat, expand renew production and educate the public on the importance of clean water.

We take environmental improvement efforts seriously and are concerned Agencies have largely ignored this work in their efforts to promote one example the EPA’s website currently states that important drinking, swimming, and fishing. We need it for our communities, But right now 60 percent of the streams and millions of acres country aren’t clearly protected from pollution and destruction. Our unquestionably agree with the first two sentences in this statement. sentence is misleading and does the public a disservice by suggest

nations streams are left unprotected from “pollution and destruction.” These areas may not come under the jurisdiction of the federal agencies they are left wholly unprotected or vulnerable.

All states have, at some level, statutes that protect water and. In fact, these protections are more stringent than federal requirements. the protections offered under the federal CWA. In addition, many districts undertake additional efforts to protect water quality, often a federal requirement to do so. It is also important to note that legislature or ballot process, has the ability to expand existing provisions of federal oversight does not equate to a standard of protection as otherwise.

The Agencies statement also alludes to extending jurisdiction to an streams. It is difficult to conceptualize this in relation to the proposed rule only jurisdiction by 3 percent.

IX. Remaining Ambiguity and Questions

Despite the proposals stated objective to add clarity to the regulation, in fact creates great confusion and uncertainty. Some of the have been added to above, e.g., what will be the effect of the proposed operation of stormwater control facilities, or the repair and replacement issues that must be addressed, through clarification and ongoing dialogue amongst stakeholders, include:

- What is the impact of the proposal on impoundments currently RCRA but for which no exemption exists;
- Who, i.e., the agencies or the project proponent, will determine connection exists, how will that determination be accomplished and what degree of connection is adequate to find that the waters jurisdictional;
- Are isolated waters without any direct surface or shallow surface to TNWs which periodically capture sheet flows containing pollutants jurisdictional;
- Are all normally dry arroyos or washes that flow only in rainfall events and occasionally reach TNWs jurisdictional or is frequency interval for such flows before jurisdiction will be?
- How will the agencies treat artificial lakes or ponds that are for such purposes as stock watering, irrigation, settling basins, including stormwater ponds?
- How will the agencies treat depressions that are incidental to than construction activity;

- Will ~~the~~ ~~swales~~ ~~used~~ ~~to~~ ~~capture~~ ~~stormwater~~ ~~be~~ ~~jurisdictional~~?
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- How ~~will~~ ~~the~~ ~~agency~~ ~~treat~~ ~~construction~~ ~~detention~~ ~~ponds~~ ~~that~~ ~~are~~ ~~navigable~~ ~~waters~~?
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- Will ~~“other~~ ~~waters”~~ ~~for~~ ~~which~~ ~~no~~ ~~scientific~~ ~~study~~ ~~has~~ ~~been~~ ~~lie~~ ~~within~~ ~~a~~ ~~region~~ ~~or~~ ~~basin~~ ~~for~~ ~~which~~ ~~a~~ ~~study~~ ~~of~~ ~~a~~ ~~conducted~~, ~~be~~ ~~considered~~ ~~jurisdictional~~ ~~if~~ ~~the~~ ~~“other~~ ~~water”~~ ~~is~~?
- Is ~~it~~ ~~accurate~~ ~~to~~ ~~state~~ ~~that~~ ~~“all”~~ ~~ephemeral~~ ~~or~~ ~~intermittent~~ ~~are~~ ~~considered~~ ~~jurisdictional~~?
- Is ~~it~~ ~~accurate~~ ~~to~~ ~~state~~ ~~that~~ ~~waters~~ ~~adjacent~~ ~~navigable~~ ~~tributaries~~, ~~tributaries~~, ~~regardless~~ ~~of~~ ~~how~~ ~~remote~~ ~~or~~ ~~insubstantial~~ ~~the~~ ~~connection~~ ~~is~~ ~~jurisdictional~~?
- If ~~a~~ ~~ditch~~ ~~starts~~ ~~at~~ ~~a~~ ~~point~~ ~~on~~ ~~land~~ ~~that~~ ~~is~~ ~~not~~ ~~such~~ ~~a~~ ~~water~~ ~~body~~ ~~categorically~~ ~~jurisdictional~~?
- If ~~a~~ ~~pipeline~~ ~~is~~ ~~constructed~~ ~~across~~ ~~a~~ ~~normally~~ ~~dry~~ ~~wash~~ ~~during~~ ~~construction~~ ~~activity~~ ~~occurs~~ ~~only~~ ~~when~~ ~~water~~ ~~is~~ ~~not~~ ~~flowing~~, ~~nevertheless~~ ~~need~~ ~~a~~ ~~discharge~~ ~~permit~~ ~~(if~~ ~~the~~ ~~answer~~ ~~is~~ ~~“yes”~~ ~~or~~ ~~if~~ ~~there~~ ~~any~~ ~~limits~~ ~~on~~ ~~the~~ ~~amount~~ ~~or~~ ~~frequency~~ ~~of~~ ~~flow~~ ~~that~~ ~~wash~~ ~~or~~ ~~dry~~ ~~into~~ ~~it~~ ~~);~~
- If ~~an~~ ~~exempt~~ ~~ditch~~ ~~eventually~~ ~~takes~~ ~~on~~ ~~wetland~~ ~~characteristics~~ ~~of~~ ~~water~~ ~~through~~ ~~it~~ ~~becomes~~ ~~jurisdictional~~?
- Are ~~there~~ ~~any~~ ~~temporal~~ ~~metrics~~ ~~for~~ ~~determining~~ ~~if~~ ~~groundwater~~ ~~make~~ ~~the~~ ~~jurisdictional~~ ~~connection~~ ~~(for~~ ~~example~~, ~~if~~ ~~it~~ ~~takes~~ ~~t~~ ~~subsurface~~ ~~flow~~ ~~to~~ ~~go~~ ~~from~~ ~~the~~ ~~source~~ ~~to~~ ~~the~~ ~~land~~ ~~NW~~, ~~is~~ ~~it~~ ~~jurisdictional~~?
- Does ~~the~~ ~~proposal~~ ~~regulate~~ ~~only~~ ~~what~~ ~~are~~ ~~found~~ ~~to~~ ~~be~~ ~~jurisdictional~~ ~~understanding~~ ~~of~~ ~~that~~ ~~term~~, ~~or~~ ~~is~~ ~~jurisdiction~~ ~~being~~ ~~the~~ ~~entire~~ ~~aquatic~~ ~~ecosystem~~, ~~including~~ ~~associated~~ ~~chemical~~, ~~biological~~ ~~and~~ ~~other~~ ~~features~~?
- Would ~~all~~ ~~ponds~~ ~~or~~ ~~lagoons~~, ~~including~~ ~~artificial~~ ~~ones~~ ~~that~~ ~~over~~ ~~precipitation~~ ~~events~~, ~~resulting~~ ~~in~~ ~~overland~~ ~~flow~~ ~~that~~ ~~reaches~~ ~~TN~~ ~~be~~ ~~jurisdictional~~?

It ~~is~~ ~~essential~~ ~~that~~ ~~answers~~ ~~be~~ ~~provided~~ ~~for~~ ~~each~~ ~~of~~ ~~the~~ ~~questions~~ ~~finalized~~ ~~and~~ ~~before~~ ~~any~~ ~~dialogue~~ ~~is~~ ~~considered~~ ~~complete~~.

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 - Supreme???
 - Court.???
 - ???
 - Seek???
 - input???
 - from???
 - the???
 - stakeholders???
 - details???
 - of???
 - the???
 - scope???
 - of???
 - the???
 - charge.???
 - ???
5. ~~Re~~ notice???
 - the???
 - proposal???
 - in???
 - which???
 - reflects???
 - the???
 - modifications???
 - resulting???
 - from???
 - the???
 - above???
 - process.???
 - ???

6. Establish a timeline to accomplish the above, with periodic updates to Congress as necessary.

Finally, to the extent the agencies' referenced proposals are similar thereto, the NWRA requests that any final rule specifically identified in these comments.

Respectfully,



Robert W. Johnson

Executive Vice President

National Water Resources Association

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Swackhammer, J-Troy
Sent: Mon 3/27/2017 5:15:54 PM
Subject: WOTUS-2 Wednesday meeting?

Donna and Damaris,

Is there a meeting on Wednesday for AA's or Office Directors? I plan to attend the Tuesday staff-level meeting.

Troy

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Christensen, Damaris
Sent: Mon 3/27/2017 3:48:18 AM
Subject: FW: Microsoft project
Re: Microsoft project

Rose, Donna,

I'm forwarding the whole chain in case you have questions but the short version is:

1. Cindy Barger at Army volunteered to do some gantt charts for us last week (she likes them!)
2. She is using Microsoft Project
3. So we can have access to what she puts on Sharepoint (Rose, you'd be backup for me and Donna) you need to request that EZTech puts Project on your computer
4. EZ Forms is available at **Nonresponsive Internal URL/ Ex. 6** via Licensed Software. It went through for me without a license number and I used Sharon Gonder as my supervisor since she will apparently be the one approving.

Damaris

PS - Cindy is having some access problems with Sharepoint but her IT folk and ours are connecting.

-----Original Message-----

From: Sheeler, Antonio
Sent: Friday, March 24, 2017 11:26 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Microsoft project

Yes. We are requesting the software.
See attached message from Sharon Gonder

Sincerely,
Antonio L. Sheeler
Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans
and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov
Office: (202) 566-1567

Personal Phone / Ex. 6

-----Original Message-----

From: Eisenberg, Mindy
Sent: Friday, March 24, 2017 11:21 AM
To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Microsoft project

Since we don't have a license number can I leave that blank on the form?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Sheeler, Antonio
Sent: Friday, March 24, 2017 11:20 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Microsoft project

It is Licensed software.

Sincerely,
Antonio L. Sheeler
Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans
and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov
Office: (202) 566-1567

Personal Phone / Ex. 6

-----Original Message-----

From: Eisenberg, Mindy
Sent: Friday, March 24, 2017 11:15 AM
To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Microsoft project

Is this considered shareware or licensed?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Sheeler, Antonio
Sent: Friday, March 24, 2017 10:10 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Microsoft project
Importance: High

Each person needs to place their own requests.

Sincerely,
Antonio L. Sheeler
Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN Mgr / Technical Support)
Policy, Communications & Resource Management Division Office of Water, Office of Wetlands, Oceans
and Watersheds United States Environmental Protection Agency Sheeler.antonio@epa.gov
Office: (202) 566-1567

Personal Phone / Ex. 6

-----Original Message-----

From: Christensen, Damaris
Sent: Friday, March 24, 2017 10:09 AM
To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: Microsoft project

Got it, thanks. Mindy, rose, Donna and I will all need access. Do we each need to fill out that form or can I do it for everybody?

I have a few meetings coming up but will try to get this filled out early this afternoon.

Damaris

Sent from my iPhone

> On Mar 24, 2017, at 9:50 AM, Sheeler, Antonio <Sheeler.Antonio@epa.gov> wrote:
>
> Damaris,
>
> Did you get the response from Sharon Gonder stating that you would need to make your request for Microsoft Project via EZ Forms?
> EZ Forms is available at; **Nonresponsive Internal URL/ Ex. 6** via
Licensed Software.

>
>
> Sincerely,
> Antonio L. Sheeler
> Information Technology Specialist (Project Mgmt / SharePoint SCA / LAN
> Mgr / Technical Support) Policy, Communications & Resource Management
> Division Office of Water, Office of Wetlands, Oceans and Watersheds
> United States Environmental Protection Agency Sheeler.antonio@epa.gov
> Office: (202) 566-1567

Personal Phone / Ex. 6

> -----Original Message-----
> From: Christensen, Damaris
> Sent: Friday, March 24, 2017 9:23 AM
> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>
> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
> Subject: Re: Microsoft project
>

> Ok great. The army corps can use Microsoft project and it would be great to be able to coordinate with them as we plan the WOTUS rule.

>
> Damaris

> Sent from my iPhone
>

>> On Mar 24, 2017, at 9:21 AM, Sheeler, Antonio <Sheeler.Antonio@epa.gov> wrote:
>>

>> Good Morning Damaris,
>>

>> I do know that in the past that Microsoft Project has been purchased and used however it was never used widely.

>> I will check with the PMO so that they can check with OEI to see if they are planning to make it available and if it will work along with our Office365 Suite.

>>

>> Given that we were just upgraded to Office365/Office2016 and that we

>> are nearing the rollout of Windows10 there may be some hesitation Required unless it can be

incorporated along with the Office365 suite.

>>

>> Sincerely,

>> Antonio L. Sheeler

>> Information Technology Specialist (Project Mgmt / SharePoint SCA /

>> LAN Mgr / Technical Support) Policy, Communications & Resource

>> Management Division Office of Water, Office of Wetlands, Oceans and

>> Watersheds United States Environmental Protection Agency

>> Sheeler.antonio@epa.gov

>> Office: (202) 566-1567

>> Personal Phone / Ex. 6 5

>>

>> -----Original Message-----

>> From: Christensen, Damaris

>> Sent: Friday, March 24, 2017 8:50 AM

>> To: Sheeler, Antonio <Sheeler.Antonio@epa.gov>

>> Subject: Microsoft project

>>

>> Antonio, do we have access to Microsoft project here at EPA? If so how would we go about getting it in our computers?

>>

>> Damaris

>>

>> Sent from my iPhone

To: Nandi, Romell[Nandi.Romell@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Hurl, Kathy
Sent: Fri 3/24/2017 5:30:35 PM
Subject: RE: OW Action Tracker for April -- input requested by 2pm on Thursday 3/30

Romell, here are my updates to the Tracker.

Deliberative Process / Ex. 5

From: Nandi, Romell
Sent: Friday, March 24, 2017 12:51 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Robiou, Grace <Robiou.Grace@epa.gov>; Bonanno, Gale <Bonanno.Gale@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>; Mayo, Alice <Mayio.Alice@epa.gov>; Holdsworth, Susan <Holdsworth.Susan@epa.gov>; Reumann-Moore, Kyra <Reumann-Moore.Kyra@epa.gov>; Groman, Hazel <Groman.Hazel@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: OW Action Tracker for April -- input requested by 2pm on Thursday 3/30
Importance: High

All:

It is time to update the OW Action Tracker, for April. See March version, attached.

Wetlands – please note that Sandy Evalenko has added WOTUS in the Rules section.

Deliberative Process / Ex. 5

Please provide any updates **by 2pm on Thursday, March 30.**

You can just make any changes in redline/strikeout in the tracker itself. If you are not changing anything, please just tell me, “no changes” rather than not responding.

OWOW items currently in the Tracker are listed below (on page 6). **If your item is in Scout and you are changing the date, please inform Tomeka Nelson so that the date in Scout is consistent with the date in the Tracker.**

Rules

WOTUS

Deliberative Process / Ex. 5

FRN

Deliberative Process / Ex. 5

-

Reports

Deliberative Process / Ex. 5

FACA

Deliberative Process / Ex. 5

Thanks.

Romell

566-1203

From: Microsoft Outlook
Location: TBD (hopefully WJCE 3233 but we're checking)
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-Related 10am Meeting Requests
Start Date/Time: Wed 3/22/2017 3:00:00 PM
End Date/Time: Wed 3/22/2017 4:00:00 PM

Your meeting was forwarded

Frazer, Brian has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-Related 10am Meeting Requests

Meeting Time

Wednesday, March 22, 2017 11:00 AM-12:00 PM.

Recipients

Flannery-Keith, Erin

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Evalenko, Sandy
Sent: Wed 3/22/2017 12:19:01 PM
Subject: FW: For Review and Comment: Revised Draft Schedule
Proposed Schedule for WOTUS OMB Submission 12.29.14.docx

FYI – This is for the final rule.

From: Crawford, Tiffany
Sent: Monday, December 29, 2014 9:54 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Cc: Lousberg, Macara <Lousberg.Macara@epa.gov>
Subject: FW: For Review and Comment: Revised Draft Schedule

Good morning Ladies!

I have updated the draft schedule circulated on 12/23/14 to reflect feedback John and others received from Ken in a meeting on 12/24/14 (see email below). Please review, and let me know if you have any questions of suggested edits.

Thank you,

Tiffany N. Crawford

US Environmental Protection Agency

Wetlands & Aquatic Resources Regulatory Branch

Office Wetlands, Oceans and Watersheds (detailee)

Office of Water

Other Contact Information:

Email: Crawford.Tiffany@epa.gov

Office: (202) 566-2375

From: Crawford, Tiffany

Sent: Monday, December 29, 2014 9:50 AM

To: Goodin, John

Cc: Kaiser, Russell; Downing, Donna; Best-Wong, Benita

Subject: For Review and Comment: Revised Draft Schedule

Hello all:

Based on the information provided below, I have developed a revised draft schedule for your review and feedback.

Thank you,

Tiffany N. Crawford

US Environmental Protection Agency

Wetlands & Aquatic Resources Regulatory Branch

Office Wetlands, Oceans and Watersheds (detailee)

Office of Water

Other Contact Information:

Email: Crawford.Tiffany@epa.gov

Office: (202) 566-2375

From: Goodin, John
Sent: Wednesday, December 24, 2014 12:27 PM
To: Crawford, Tiffany
Cc: Kaiser, Russell; Downing, Donna; Best-Wong, Benita
Subject: RE: Touching Base on WOTUS

Thanks, Tiffany. We heard this morning that we are likely now looking at Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 There may also be

Deliberative Process / Ex. 5

Stayed tuned...and thanks,

John

From: Crawford, Tiffany
Sent: Tuesday, December 23, 2014 3:44 PM
To: Gude, Karen
Cc: Evalenko, Sandy; Lousberg, Macara; Kaiser, Russell; Goodin, John
Subject: RE: Touching Base on WOTUS

Hey Karen (cc: Sandy, Macara, Russ, John):

I have attached a copy of the proposed schedule that Russ and John have agreed to. We appreciate any assistance you, Macara, and Sandy can provide in sharing this information with Ken for his input and direction on next steps.

Have a good day,

Tiffany N. Crawford

US Environmental Protection Agency

Wetlands & Aquatic Resources Regulatory Branch

Office Wetlands, Oceans and Watersheds (detailee)

Office of Water

Other Contact Information:

Email: Crawford.Tiffany@epa.gov

Office: (202) 566-2375

From: Gude, Karen

Sent: Tuesday, December 23, 2014 12:46 PM

To: Crawford, Tiffany

Subject: RE: Touching Base

Thank you!!

From: Crawford, Tiffany

Sent: Tuesday, December 23, 2014 12:46 PM

To: Gude, Karen

Subject: RE: Touching Base

Thanks Karen –

Russ is still thinking through the options I developed. I will send you (copying Sandy and Macara), the version that Russ and John agree to as soon as I have decision.

Thanks again,

Tiffany N. Crawford

US Environmental Protection Agency

Wetlands & Aquatic Resources Regulatory Branch

Office Wetlands, Oceans and Watersheds (detailee)

Office of Water

Other Contact Information:

Email: Crawford.Tiffany@epa.gov

Office: (202) 566-2375

From: Gude, Karen

Sent: Tuesday, December 23, 2014 11:12 AM

To: Crawford, Tiffany

Subject: Touching Base

Tiffany,

Hi. Thanks again for the update this morning. I spoke with Macara. She does not have a standing meeting with Ken scheduled for next week, but both she and Ken will be in the office, and she is more than happy to try and find time to meet with him on WOUS scheduling.

I walked her through the scheduling options/issues that you'd outlined this morning, and she is happy to talk with Ken about these. I know that you were meeting with Russ and John this morning to get some decisions/concurrence on the proposed scheduling options. If you have an updated version/something that I could share with Macara electronically, this would be helpful.

If you should have questions/would like to touch base further on this, please just let me know.

Thanks again!

Karen Gude

Water Policy Staff, Office of Water

U.S. Environmental Protection Agency

Phone: (202) 564-9567

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Wed 3/22/2017 12:11:14 PM
Subject: Clean Water Rule Call in

Nonresponsive Conference Code/ Ex. 6

Are there any materials for this meeting today? Please advise.

Subject: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**
Location: 3233 WJCE

Start: Wed 3/22/2017 10:30 AM
End: Wed 3/22/2017 11:15 AM
Show Time As: Tentative

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Breen, Barry; Cheatham, Reggie; Greenwalt, Sarah; Schmauder, Craig R SES (US; Lamont, Douglas W SES (US

Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Pollins, Mark; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Sandy Evalenko; Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Jennings, Kim

From: Wendelowski, Karyn
Location: TBD (hopefully WJCE 3233 but we're checking)
Importance: Normal
Subject: Accepted: Responding to CWR-Related 10am Meeting Requests
Start Date/Time: Wed 3/22/2017 3:00:00 PM
End Date/Time: Wed 3/22/2017 4:00:00 PM

From: Microsoft Outlook
Location: TBD (hopefully WJCE 3233 but we're checking)
Importance: Normal
Subject: Meeting Forward Notification: Responding to CWR-Related 10am Meeting Requests
Start Date/Time: Wed 3/22/2017 3:00:00 PM
End Date/Time: Wed 3/22/2017 4:00:00 PM

Your meeting was forwarded

Wehling, Carrie has forwarded your meeting request to additional recipients.

Meeting

Responding to CWR-Related 10am Meeting Requests

Meeting Time

Wednesday, March 22, 2017 11:00 AM-12:00 PM.

Recipients

Wendelowski, Karyn

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW Telecom--

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency meeting

Start Date/Time: Tue 3/21/2017 3:00:00 PM

End Date/Time: Tue 3/21/2017 4:00:00 PM

Your meeting was forwarded

Wehling, Carrie has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency meeting

Meeting Time

Tuesday, March 21, 2017 11:00 AM-12:00 PM.

Recipients

Wendelowski, Karyn

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Swackhammer, J-Troy

Location: DCRoomWest7129/DC-CCW-OWOW Telecom--

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: FW: WOTUS-2 interagency meeting

Start Date/Time: Tue 3/21/2017 3:00:00 PM

End Date/Time: Tue 3/21/2017 4:00:00 PM

From: Microsoft Outlook

Location: DCRoomWest7129/DC-CCW-OWOW Telecom-

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Meeting Forward Notification: WOTUS-2 interagency meeting

Start Date/Time: Tue 3/21/2017 3:00:00 PM

End Date/Time: Tue 3/21/2017 4:00:00 PM

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency meeting

Meeting Time

Tuesday, March 21, 2017 11:00 AM-12:00 PM.

Recipients

Swackhammer, J-Troy

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Evalenko, Sandy
Sent: Mon 3/20/2017 11:35:17 PM
Subject: Re: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Yes. I can print it to a document and send it in an email.

Sandy

Sent from my iPhone

On Mar 20, 2017, at 7:34 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Hi Sandy,

Since we can't get into Lotus Notes, can you send a screenshot? That way we can send edits.

Thanks!

From: Sandy Evalenko [<mailto:Evalenko.Sandy@epamail.epa.gov>]
Sent: Friday, March 17, 2017 4:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.

<[image001.png](#)>

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 3/20/2017 11:34:02 PM
Subject: RE: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Hi Sandy,

Since we can't get into Lotus Notes, can you send a screenshot? That way we can send edits.

Thanks!

From: Sandy Evalenko [mailto:Evalenko.Sandy@epamail.epa.gov]
Sent: Friday, March 17, 2017 4:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.



To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Evalenko, Sandy
Sent: Mon 3/20/2017 8:31:17 PM
Subject: Re: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Great thanks.

Sent from my iPhone

On Mar 20, 2017, at 4:07 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Hi Sandy,

They did not set up LN after they returned my old machine, so I have a ticket in with the Ez Tech team. I tried forwarding to Damaris, but she was also not able to open it. I'm out of the office starting tomorrow, but have copied Damaris here.

From: Sandy Evalenko [<mailto:Evalenko.Sandy@epamail.epa.gov>]
Sent: Friday, March 17, 2017 4:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.

<[image003.png](#)>

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 3/20/2017 8:07:25 PM
Subject: RE: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Hi Sandy,

They did not set up LN after they returned my old machine, so I have a ticket in with the Ez Tech team. I tried forwarding to Damaris, but she was also not able to open it. I'm out of the office starting tomorrow, but have copied Damaris here.

From: Sandy Evalenko [mailto:Evalenko.Sandy@epamail.epa.gov]
Sent: Friday, March 17, 2017 4:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.



To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Kwok, Rose
Sent: Mon 3/20/2017 2:23:47 PM
Subject: RE: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Hi Sandy,

I was out on Friday, and I have a loaner computer right now, so I'm not sure that I can open Lotus Notes since this machine doesn't have my Lotus Notes ID. Donna is out today, but I should have my computer back later today.

Simma Kupchan is the OGC attorney

From: Sandy Evalenko [mailto:Evalenko.Sandy@epamail.epa.gov]
Sent: Friday, March 17, 2017 4:07 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.



From: Bennett, Brittany
Location: TBD (hopefully WJCE 3233 but we're checking)
Importance: Normal
Subject: Declined: Responding to CWR-Related 10am Meeting Requests
Start Date/Time: Wed 3/22/2017 3:00:00 PM
End Date/Time: Wed 3/22/2017 4:00:00 PM

I will be in the field with Brian Topping Tuesday through Thursday, so I will not be able to make this meeting.

B

From: Theis, Joseph

Location: DCRoomWest7129/DC-CCW-OWOW Telecom-- **Nonresponsive Conference Code/ Ex. 6**

Importance: Normal

Subject: Accepted: WOTUS-2 interagency meeting

Start Date/Time: Tue 3/21/2017 3:00:00 PM

End Date/Time: Tue 3/21/2017 4:00:00 PM

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Evalenko, Sandy
Sent: Mon 3/20/2017 12:35:19 PM
Subject: CWR Tiering form

Rose/Donna: I prepared a tiering form late on Friday and sent it to you all via the ADP tracker system. Did you receive it to review and revise? It's odd but I can't find the tiering form in ADP tracker so I'm wondering if you received it. Also, who is the lead OGC rep? I want to add their names so that they can review the form once you all are finished. Please let me know.

Thanks,

Sandy

Cc: Brown, Sineta[Brown.Sineta@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Sun 3/19/2017 5:27:37 PM
Subject: Re: CMS New Assignment - Yvonne Smothers - AX-17-000-6257

Hey Sineta - Donna sent this to me before Mindy suggested you adapt previous responses for this. Let me know if I should draft something or if you have it under control.

Damaris

Sent from my iPhone

> On Mar 18, 2017, at 4:50 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

>

> Hi Sineta,

> Please prepare a response based on the ones that Damaris drafted and I edited.

>

> thanks

>

> Mindy Eisenberg

> Acting Director, Wetlands Division

> Office of Wetlands, Oceans and Watersheds

> U.S. Environmental Protection Agency

> 1200 Pennsylvania Ave., NW, mailcode 4502T

> Washington, DC 20460

> (202) 566-1290

> eisenberg.mindy@epa.gov

>

> -----Original Message-----

> From: Brown, Sineta

> Sent: Thursday, March 16, 2017 4:43 PM

> To: Downing, Donna <Downing.Donna@epa.gov>

> Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

> Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-6257

>

> Donna,

>

> Attached is a control from Greg Goeser Re: Please help restore the Clean Water Rule. The due date for this control is March 31, 2017 and it is for Mindy's Signature. If you have any questions, feel free to stop by, give me a call or send me an email message.

>

> Thank you.

>

> Sineta Brown

> Program Analyst

> Office of Wetlands Oceans and Watersheds Wetlands Division

> 202-564-3666

>

> -----Original Message-----

> From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]

> Sent: Thursday, March 16, 2017 1:55 PM

> To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>;

Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>

> Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-6257

>

> Control AX-17-000-6257 has been assigned to your office on 3/16/17 1:54 PM by Yvonne Smothers. Please go to the CMS webpage to view the details of the control.

>

> Summary Information -

> Control Number: AX-17-000-6257

> Control Subject: DRF - Please help restore the Clean Water Rule

> From: Goesser, Greg J.

>

>

> Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS.Information@epa.gov.

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]
From: Sandy Evalenko
Sent: Fri 3/17/2017 8:07:09 PM
Subject: ADP TRACKER - Planned Action Office Approval Request: Intention To Review and Rescind or Revise the Clean Water Rule

Please review and provide Office approval for the planned action: 'Intention To Review and Rescind or Revise the Clean Water Rule'. Follow the doclink and then click the 'New Approval' button.



To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Thur 3/16/2017 10:12:49 PM
Subject: Re: WOTUS-2 Briefing Materials

Thanks Donna. Are you still expecting edits to the attached docs?

On Mar 16, 2017, at 5:58 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Ann –

Attached please find the current version of the WOTUS-2 draft materials for the Administrator's briefing on Monday. The attachments include:

- Briefing one-pager
- Attachment 1:
- Attachment 2: **Deliberative Process / Ex. 5**
- Attachment 4:

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder where these attached documents reside in case Steve or others want to continue editing:

Nonresponsive Internal URL/ Ex. 6

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<Attachment 4 WOTUS2 Effects on Other Programs.docx>

<Attachment 2 Options for Scalia test v1.docx>

<WOTUS2 briefing paper 3-16-17.docx>

<Attachment 1 Rule Timeline short v4.xlsx>

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/16/2017 9:42:31 PM
Subject: Fwd: Status check on briefing paper and attachments

Hope you are outta there!

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Kupchan, Simma" <Kupchan.Simma@epa.gov>
Date: March 16, 2017 at 5:28:32 PM EDT
To: "Downing, Donna" <Downing.Donna@epa.gov>
Cc: "Christensen, Damaris" <Christensen.Damaris@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Auerbach, Daniel" <Auerbach.Daniel@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Bennett, Brittany" <bennett.brittany@epa.gov>, "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>
Subject: RE: Status check on briefing paper and attachments

Attached is the updated Implications paper for the package. Thanks for compiling!

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Downing, Donna
Sent: Thursday, March 16, 2017 4:44 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Status check on briefing paper and attachments

Hi Simma –

I'm lining up the attachments so that I can transmit to Ann the briefing paper and all attachments at 5:30 ± ten minutes.

Deliberative Process / Ex. 5

Thanks!

Donna

From: Kupchan, Simma
Sent: Thursday, March 16, 2017 3:59 PM
To: Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

I will circulate the impacts paper incorporating people's edits by 5:30.

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Goodin, John
Sent: Thursday, March 16, 2017 3:33 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

Just spoke to Ann and she'll make the connection with Sarah before 1p tomorrow. Let's plan to send a complete packet to Mike NLT COB today for a final look, recognizing that there may be some additional edits underway this evening, pending the discussion with Kevin, etc.

Donna will continue to serve as the point of collection for the documents and their edits this afternoon—thanks!

John

From: Neugeboren, Steven

Sent: Thursday, March 16, 2017 2:15 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna

Sent: Thursday, March 16, 2017 1:46 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Attachment 2 plus comments on latest draft briefing paper

Hi folks:

Here is a Sharepoint link to Attachment 2 ([Deliberative Process / Ex. 5](#)) as discussed in Steve's email and draft briefing paper:

Nonresponsive Internal URL/ Ex. 6

OWOW managers and staff have put our edits in the Sharepoint draft briefing document that Steve distributed via the email below. That document is available at:

Nonresponsive Internal URL/ Ex. 6

Let us know if you have trouble accessing Sharepoint and these documents, and we could send you a copy directly. Thanks!

Donna

From: Neugeboren, Steven
Sent: Wednesday, March 15, 2017 10:33 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro,

Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Briefing paper draft

After (probably too) much thought, I have prepared the draft briefing paper. It is refocused in certain ways largely informed by conversations with Sarah today in terms of what the Administrator is looking for, as well as some of my own thinking about the potential paths forward and how we could perhaps most effectively frame Monday's discussion.

It is now one page, with a series of attachments (I mentioned an attachments approach to Sarah, and she seemed to think that would be ok, although I don't know how many would be ok). Also per Sarah,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

<WOTUS2 Effects on Other Programs.docx>

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Auerbach, Daniel
Sent: Thur 3/16/2017 7:38:18 PM
Subject: Re: Attachment 2 plus comments on latest draft briefing paper

Rose, going forward can you please name/rename files more informatively? "Talking points", "Attachment 1,2,3etc"? Renaming should not break links on existing...

From: Downing, Donna
Sent: Thursday, March 16, 2017 3:35:28 PM
To: Goodin, John; Neugeboren, Steven; Eisenberg, Mindy; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Bennett, Brittany; Best-Wong, Benita; Shapiro, Mike; Peck, Gregory; Campbell, Ann; Kupchan, Simma; Wehling, Carrie; Wendelowski, Karyn
Subject: RE: Attachment 2 plus comments on latest draft briefing paper

Please either insert your edits and suggestions into the Sharepoint document by 4:30pm today. If you have difficulty using Sharepoint, let me know. Thanks!

Donnha

From: Goodin, John
Sent: Thursday, March 16, 2017 3:33 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
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Sent: Thursday, March 16, 2017 2:15 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: Attachment 2 plus comments on latest draft briefing paper

Deliberative Process / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna

Sent: Thursday, March 16, 2017 1:46 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: Attachment 2 plus comments on latest draft briefing paper

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Nonresponsive Internal URL/ Ex. 6

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Nonresponsive Internal URL/ Ex. 6

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Sent: Wednesday, March 15, 2017 10:33 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Campbell, Ann[Campbell.Ann@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
From: Goodin, John
Sent: Thur 3/16/2017 6:46:15 PM
Subject: RE: For Review: CWR Writeup for OW Weekly Report to Admin

Jumping in here as I think Donna is on a call for another hour...

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Campbell, Ann
Sent: Thursday, March 16, 2017 2:24 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: For Review: CWR Writeup for OW Weekly Report to Admin

Anything to add?

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Thur 3/16/2017 6:26:51 PM
Subject: RE: For Review: CWR Writeup for OW Weekly Report to Admin

I understand Sarah Greenwalt will be engaging directly on this.

From: Downing, Donna
Sent: Thursday, March 16, 2017 2:26 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: For Review: CWR Writeup for OW Weekly Report to Admin

Deliberative Process / Ex. 5

Donna

From: Campbell, Ann
Sent: Thursday, March 16, 2017 2:24 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: For Review: CWR Writeup for OW Weekly Report to Admin

Anything to add?

-

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/16/2017 5:25:42 PM
Subject: RE: WOTUS-2 TPs

Also – I don't recall seeing WOTUS 2 TPs you wrote initially so I may have misread your email and be working with the wrong thing...

From: Downing, Donna
Sent: Thursday, March 16, 2017 1:01 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: WOTUS-2 TPs

Yes, please.

From: Christensen, Damaris
Sent: Thursday, March 16, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: WOTUS-2 TPs

Sorry I was at lunch. Still need these?

Sent from my iPhone

On Mar 16, 2017, at 11:46 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hiya Damaris –

(left a voicemail as well)

You mentioned you'd updated our standard public WOTUS-2 TPs from what I'd developed before. I just got a request from OCIR for TPs for Pruitt and I'm inclined to run with these already-created ones, but wanted the latest version you've improved. Could you send them? I'm on a turnaround time that's really tight. Thanks! For your help!

I'll also work on getting these out to the Regions as well.

Donna

Donna Downing

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/16/2017 4:54:48 PM
Subject: Re: WOTUS-2 TPs

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ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

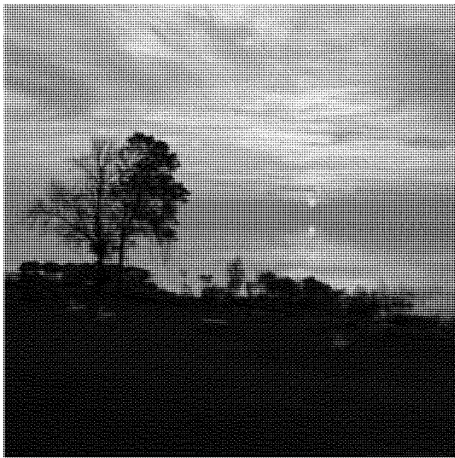
Washington, DC 20004

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW Telecom available
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 3/21/2017 3:00:00 PM
End Date/Time: Tue 3/21/2017 4:00:00 PM

To: Armentrout, Ashleigh[Armentrout.Ashleigh@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Chemerys, Ruth[Chemerys.Ruth@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Dils, Rebecca[Dils.Rebecca@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Hurl, Kathy[Hurl.Kathy@epa.gov]; Kutschenreuter, Kathleen[Kutschenreuter.Kathleen@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Price, Myra[Price.Myra@epa.gov]; Rossi, Ann[Rossi.Ann@epa.gov]; Schaefer-Gomez, Julia[Schaefer-Gomez.Julia@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]
From: McDavit, Michael W.
Sent: Wed 3/15/2017 5:51:21 PM
Subject: Thank You to Donna, Rose and Damaris!!!

I wanted to thank Donna, Rose and Damaris for kicking off the PDJB briefings series with the presentation on CWR 1.0 and 2.0. The presentation was very well done, informative, engaging and sets the bar quite high for the rest of us! I really appreciate your taking the time to bring us up to speed on a very “complicated” matter.

Thanks again for being the Guinea pig. I look forward to more conversations and opportunities for learning from one another. This was a great start, a sunrise if you will..



Sunrise over Lake Huron, St. Ignace

Michael

W. Michael McDavit, Chief

Wetlands Strategies and State Programs Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/14/2017 9:58:02 PM
Subject: WOTUS2_briefingTableShort - clean.docx
WOTUS2_briefingTableShort - clean.docx

Attached and on Sharepoint.

Open WOTUS2_briefingTableShort - clean.docx

To: Downing, Donna[Downing.Donna@epa.gov]
From: Stokely, Peter
Sent: Tue 3/14/2017 6:38:09 PM
Subject: Re: WOTUS-2 interagency meeting

Donna, do I assume from the nature of the 10am meeting and your comments about keeping it small that I should just plan to attend the 11 am meeting? However, I am still on the invite, along with Drew and Mark.

Peter Stokely
EPA Office of Civil Enforcement
Washington, DC
202-564-1841

CONFIDENTIAL: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message was sent to you in error you are instructed to delete it from your computer including all media storage devices and hard copy outputs.

From: Downing, Donna
Sent: Tuesday, March 14, 2017 12:52:06 PM
To: Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark
Subject: WOTUS-2 interagency meeting
When: Tuesday, March 21, 2017 11:00 AM-12:00 PM.
Where: DCRoomWest7129/DC-CCW-OWOW Telecom available

Agenda will precede the meeting.

I've reserved a room at EPA, but the meeting could be held at the Corps if they prefer.

Telecom: cal Nonresponsive Conference Code/ Ex. 6

(Incidentally, I'll be on travel this week, but other OWOWers will run and participate in the meeting).

Donna

From: Frazer, Brian
Location: DCRoomWest7129/DC-CCW-OWOW Telecom available
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 3/21/2017 3:00:00 PM
End Date/Time: Tue 3/21/2017 4:00:00 PM

From: Auerbach, Daniel
Location: DCRoomWest7129/DC-CCW-OWOW Telecom available
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 3/21/2017 3:00:00 PM
End Date/Time: Tue 3/21/2017 4:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Tue 3/14/2017 4:59:17 PM
Subject: Re: draft agenda for tomorrow's meeting

Thanks, Mindy. I think we may

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Chat before 4p,
John

Sent from my iPhone

On Mar 14, 2017, at 12:40 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

I took the liberty of drafting the agenda for tomorrow and what we can talk thru with Mike later today. Let me know if you have edits.

thanks

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

<Agenda -- CWR Update 15 March 2017 v1.docx>

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Christensen, Damaris
Sent: Tue 3/14/2017 4:56:49 PM
Subject: RE:

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna
Sent: Tuesday, March 14, 2017 12:54 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE:

Yes!

From: Kwok, Rose
Sent: Tuesday, March 14, 2017 12:33 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re:

Do we want to add somewhere in the document the remaining issue of:

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose

Sent: Tuesday, March 14, 2017 12:08:47 PM

To: Kupchan, Simma; Downing, Donna; Christensen, Damaris

Subject: Re:

I tried to make a few edits during the call, at the same URL as before

Nonresponsive Internal URL/ Ex. 6

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kupchan, Simma

Sent: Tuesday, March 14, 2017 10:38:55 AM

To: Kwok, Rose; Downing, Donna; Christensen, Damaris

Subject:

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

To: Downing, Donna[Downing.Donna@epa.gov]
From: Stokely, Peter
Sent: Tue 3/14/2017 3:07:04 PM
Subject: Re: WOTUS-2 interagency team meeting

All circuits are busy! Can't get on the call...will keep trying

Peter Stokely
EPA Office of Civil Enforcement
Washington, DC
202-564-1841

CONFIDENTIAL: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message was sent to you in error you are instructed to delete it from your computer including all media storage devices and hard copy outputs.

From: Downing, Donna
Sent: Tuesday, March 14, 2017 8:40 AM
To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin
Cc: Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark
Subject: WOTUS-2 interagency team meeting
When: Tuesday, March 14, 2017 11:00 AM-12:00 PM.
Where: At the Corps (room TBD) Telecom: Nonresponsive Conference Code/ Ex. 6 (as in body of invitation below)

VERIFYING THE CALL-IN NUMBER

Adding an agenda:

Thanks all for a productive meeting today (Friday the 10th). This meeting is to continue our conversation, with a particular focus on **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 It's likely this will be a recurring meeting time but we can verify that on Tuesday. Please try to add your thoughts and comments to the draft summary table on Sharepoint by 5pm Monday.

Stacey will be getting us a room at the Corps, so TBD on that but EPAers should plan for a bit of travel time.

If some are unable to attend in person, let's use the same telecom information as for Friday's meeting: **Nonresponsive Conference Code/ Ex. 6**

Looking forward to talking with you.

Donna

To: Doley, Todd[Doley.Todd@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Hewitt, Julie
Sent: Tue 3/14/2017 2:55:42 PM
Subject: I will not be able to join the WOTUS call right at 11am

On another call. Will do my best to get onto the WOTUS call as quickly as I can.

From: Theis, Joseph
Location: At the Corps (room TBD) Telecon: Nonresponsive Conference Code/ Ex. 6 # (as in
body of invitation below)
Importance: Normal
Subject: Accepted: WOTUS-2 interagency team meeting
Start Date/Time: Tue 3/14/2017 3:00:00 PM
End Date/Time: Tue 3/14/2017 4:00:00 PM

From: Pollins, Mark

Location: At the Corps (room TBD) Telecom: Nonresponsive Conference Code/ Ex. 6 # (as in body of invitation below)

Importance: Normal

Subject: Tentative: WOTUS-2 interagency team meeting

Start Date/Time: Tue 3/14/2017 3:00:00 PM

End Date/Time: Tue 3/14/2017 4:00:00 PM

From: Microsoft Outlook
Location: At the Corps (room TBD) Telecom: Nonresponsive Conference Code/ Ex. 6 # (as in body of invitation below)
Importance: Normal
Subject: Meeting Forward Notification: WOTUS-2 interagency team meeting
Start Date/Time: Tue 3/14/2017 3:00:00 PM
End Date/Time: Tue 3/14/2017 4:00:00 PM

Your meeting was forwarded

Bahk, Benjamin has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency team meeting

Meeting Time

Tuesday, March 14, 2017 11:00 AM-12:00 PM.

Recipients

Cherry, Andrew

Stokely, Peter

Theis, Joseph

Pollins, Mark

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin, John
Sent: Tue 3/14/2017 12:32:05 AM
Subject: Re: As requested: latest draft WOTUS-2 briefing paper with sub-option considerations

Thanks much, Donna!

Sent from my iPhone

On Mar 13, 2017, at 7:48 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Mike:

Attached please find the latest draft briefing paper on WOTUS-2, reflecting additional discussion on sub-options and their considerations. This reflects a collaboration between OWOW and OGC.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Have a good evening, and a manageable bit of weather!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<WOTUS2 briefing paper 3.13.17 - clean (002).docx>

<Table for Options 3-8-2017 v4.docx>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Mon 3/13/2017 3:58:58 PM
Subject: Re: Would it be possible to reserve 3233 or a nearby room for a staff-level meeting following the WOTUS-2 leadership meeting scheduled for 10-10:45?

Donna, I can reserve it until 11:30 this week and maybe until that time moving forward? 45 minutes, does that work?

On Mar 10, 2017, at 2:54 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Ann:

The interagency staff-level team thought it would be helpful if we routinely met after the 10am Clean Water Rule leadership meeting on Wednesdays. Would it be possible to reserve 3233 or a nearby room for a staff-level meeting afterwards, to report out to those not attending and plan how to quickly respond to the resulting “asks?”

BTW, I made explicit in the invitation (on which you’re cc’d) that an invitation to the follow-up meeting isn’t an invitation to the leadership meeting... that list is already pretty long!

Thanks for your help. I hope you have a great weekend.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 3/13/2017 2:06:47 PM
Subject: RE: Responding to Clean Water Rule 10am meeting leadership requests

Did you check with Crystal on the room, or would you like me to?

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, March 10, 2017 2:50 PM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd

Subject: Responding to Clean Water Rule 10am meeting leadership requests

When: Wednesday, March 15, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: TBD; we'll try to confirm Room 3233 the same room as the leadership meeting

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to (1) hear from those participating in the leadership meeting what direction we received and what are the next "asks," and (2) plan how best to respond.

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

See you!

Donna

From: Christensen, Damaris
Location: At the Corps (room TBD)
Importance: Normal
Subject: Accepted: WOTUS-2 interagency team meeting
Start Date/Time: Tue 3/14/2017 3:00:00 PM
End Date/Time: Tue 3/14/2017 4:00:00 PM

From: Christensen, Damaris
Location: TBD; we'll try to confirm Room 3233 the same room as the leadership meeting
Importance: Normal
Subject: Accepted: Responding to Clean Water Rule 10am meeting leadership requests
Start Date/Time: Wed 3/15/2017 3:00:00 PM
End Date/Time: Wed 3/15/2017 4:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Fri 3/10/2017 8:26:50 PM
Subject: RE: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

No, you were right. Good catch! I've asked crystal to change it. Thank you!

From: Downing, Donna
Sent: Friday, March 10, 2017 3:26 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

Super! Just had a possible-oops moment and thought I'd check. Thanks.

Donna

From: Campbell, Ann
Sent: Friday, March 10, 2017 3:25 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

I will check but I think the CWR meeting number has been permanently changed to my call-in line

Nonresponsive Conference Code/ Ex. 6

From: Downing, Donna
Sent: Friday, March 10, 2017 3:24 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

In the past we've sometimes had the same call-in number for both a stakeholder meeting and the

WOTUS meeting that followed, which created concerns the second meeting might have more ears than intended.

Just a thought.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Fri 3/10/2017 8:25:05 PM
Subject: RE: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

I will check but I think the CWR meeting number has been permanently changed to my call-in line

Nonresponsive Conference Code/ Ex. 6

From: Downing, Donna
Sent: Friday, March 10, 2017 3:24 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: IS the TRCP call-in number the same as for the 10am WOTUS leadership meeting?

In the past we've sometimes had the same call-in number for both a stakeholder meeting and the WOTUS meeting that followed, which created concerns the second meeting might have more ears than intended.

Just a thought.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Keating, Jim
Sent: Fri 3/10/2017 6:46:07 PM
Subject: Corps-EPA staff workgroup meeting on WOTUS rule

Hi all,

I apologize but I had to drop off the call at about 1:35 **Personal Matters / Ex. 6** It wasn't because the subject matter was boring. I look forward to participating in future meetings.

Corps-EPA staff workgroup meeting on WOTUS rule

Scheduled: Friday, Mar 10, 2017 from 1:00 PM to 2:00 PM

Location: EPA 1201 Constitution Ave, NW WJCE 3233 (same room as Thursday meeting)

Please call 703-402-4488 for escort

Invitees: David.F.Dale@usace.army.mil, Wilson, John Maxwell (Max) CIV USARMY CEHQ (US), Jensen, Stacey M CIV USARMY HQDA (US), Auerbach, Daniel, Moyer, Jennifer A CIV USARMY CEHQ (US), Eisenberg, Mindy, Campbell, Ann, Hewitt, Julie, Doley, Todd, Wehling, Carrie, Goodin, John, Kupchan, Simma, Christensen, Damaris, Frazer, Brian, Downing, Donna, Kwok, Rose, Bennett, Brittany

Sent from my iPhone

From: Microsoft Outlook
Location: EPA 1201 Constitution Ave, NW WJCE 3233 (same room as Thursday meeting)
Please call Personal Phone / Ex. 6 for escort
Importance: Normal
Subject: Meeting Forward Notification: Corps-EPA staff workgroup meeting on WOTUS rule
Start Date/Time: Fri 3/10/2017 6:00:00 PM
End Date/Time: Fri 3/10/2017 7:00:00 PM

Your meeting was forwarded

Hewitt, Julie has forwarded your meeting request to additional recipients.

Meeting

Corps-EPA staff workgroup meeting on WOTUS rule

Meeting Time

Friday, March 10, 2017 1:00 PM-2:00 PM.

Recipients

Doley, Todd

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Frazer, Brian

Location: EPA 1201 Constitution Ave, NW WJCE 3233 (same room as Thursday meeting)

Please call for escort

Importance: Normal

Subject: Tentative: Corps-EPA staff workgroup meeting on WOTUS rule

Start Date/Time: Fri 3/10/2017 6:00:00 PM

End Date/Time: Fri 3/10/2017 7:00:00 PM

To: Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Fri 3/10/2017 4:26:44 PM
Subject: CWR Meeting on Wednesdays

Please add the following folks to the series. Thank you.

Samantha Dravis

Brian Frazer

Jim Keating

Douglas Lamont (Army, you have email address from Tuesday meeting)

General Jackson (Army, you have his scheduler's email address from Thursday meeting)

David Dale (Army, David.F.Dale@usace.army.mil)

Jennifer (Army Corps, jennifer.a.moyer@usace.army.mil)

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil];
David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]
From: Moyer, Jennifer A CIV USARMY CEHQ (US)
Sent: Fri 3/10/2017 11:55:03 AM
Subject: Re: [EXTERNAL] Corps-EPA staff workgroup meeting on WOTUS rule

Hello again,


Apparently my entire message didn't send last evening--many apologies.

Though it is unfortunate I am unable to attend today's meeting due to a conflict with a CEQ engagement, Stacey and Mr. Dale are able to attend. Stacey will need a call-in number as she is teleworking today.

Thanks!

Jennifer

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.



Hi Donna,

We may need to reschedule until Monday. As I

Organizer: Downing, Donna

When: 13:00 - 14:00 March 10, 2017

Subject: [EXTERNAL] Corps-EPA staff workgroup meeting on WOTUS rule

Location: EPA 1201 Constitution Ave, NW WJCE 3233 (same room as Thursday meeting)

Please call Personal Phone / Ex. 6 for escort

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil];
David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]
From: Moyer, Jennifer A CIV USARMY CEHQ (US)
Sent: Thur 3/9/2017 11:41:26 PM
Subject: [EXTERNAL] Corps-EPA staff workgroup meeting on WOTUS rule

Hi Donna,

We may need to reschedule until Monday. As I

Organizer: Downing, Donna
When: 13:00 - 14:00 March 10, 2017
Subject: [EXTERNAL] Corps-EPA staff workgroup meeting on WOTUS rule
Location: EPA 1201 Constitution Ave, NW WJCE 3233 (same room as Thursday meeting)
Please call [Personal Phone / Ex. 6] for escort

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Campbell, Ann
Sent: Thur 3/9/2017 11:34:10 PM
Subject: Re: Could you ask Crystal to add Brian Frazer and Jim Keating to the recurring Wetlands General meetings?

Will do. Will get to these and the Corps additions tomorrow. Thanks for all the great work and coordination this week.

On Mar 9, 2017, at 1:35 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Ann:

As the WOTUS-2 takes on steam, we'll benefit from standards and 402 program representation. Could you ask Crystal to add Jim Keating and Brian Frazer to the recurring "Wetlands General" Wednesday meetings? I'm still identifying the comparable level of representation from the oil spill program.

Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Bennett, Brittany
Sent: Thur 3/9/2017 4:27:45 PM
Subject: RE: JD Team Meeting Notes
JD Notes - Issues and Moving Pieces - 3.9.17.docx

See updated version.

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Bennett, Brittany
Sent: Thursday, March 09, 2017 11:11 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: JD Team Meeting Notes

Rough draft of issues and moving pieces discussed at the 3/9/17 JD Meeting

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Hewitt, Julie
Sent: Wed 3/8/2017 6:21:50 PM
Subject: Am on a conference call

Hi Donna,

I am on a call but saw that you called (and remembered that I forgot to change my outgoing vmail to indicate when I am in the office this week). I imagine you want to talk about economic analysis for a revised Clean Water rule. I'm available later this afternoon, say, after about 4pm? Would that work as a time to talk?

Thanks,

Julie

From: Christensen, Damaris
Location: DCRoomWest7201/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Discussion of WOTUS-2 options, state engagement
Start Date/Time: Wed 3/8/2017 7:30:00 PM
End Date/Time: Wed 3/8/2017 8:30:00 PM

Maybe add Brittany and Dan to the invite?

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]
From: Auerbach, Daniel
Sent: Wed 3/8/2017 3:46:28 PM
Subject: Re: Talking points on Clean Water Rule

look good to me. only thing might be to consider **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

and perhaps you'd articulate something along the lines of **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Wednesday, March 8, 2017 10:45:45 AM
To: Downing, Donna; Kwok, Rose
Cc: Auerbach, Daniel; Bennett, Brittany
Subject: RE: Talking points on Clean Water Rule

Two more things –

1. I realized I hadn't deleted a bullet point in the background where I'd decided to use different wording and
2. Of course we'll need to get OGC review

From: Christensen, Damaris
Sent: Wednesday, March 08, 2017 10:38 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Talking points on Clean Water Rule

Hey –

I just heard from Eric and it sounds like Tony had reached out to Donna and Rose, asking for TPs the Regions could use. I think that's a very fair ask, and honestly it could be helpful to me as

I talk to the national Tribal Water Council today as well.

I took the TPs for the WDDs and deleted the internal discussion of next steps and put in some background, because as Eric reminded me, many people are coming to this topic fresh.

Thoughts? Comments?

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Christensen, Damaris
Sent: Wed 3/8/2017 3:45:45 PM
Subject: RE: Talking points on Clean Water Rule

Two more things –

1. I realized I hadn't deleted a bullet point in the background where I'd decided to use different wording and
2. Of course we'll need to get OGC review

From: Christensen, Damaris
Sent: Wednesday, March 08, 2017 10:38 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Talking points on Clean Water Rule

Hey –

I just heard from Eric and it sounds like Tony had reached out to Donna and Rose, asking for TPs the Regions could use. I think that's a very fair ask, and honestly it could be helpful to me as I talk to the national Tribal Water Council today as well.

I took the TPs for the WDDs and deleted the internal discussion of next steps and put in some background, because as Eric reminded me, many people are coming to this topic fresh.

Thoughts? Comments?

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Hall, Rosemary[Hall.Rosemary@epa.gov]
From: Able, Tony
Sent: Wed 3/8/2017 3:08:54 PM
Subject: RE: Talking points on Clean Water Rule

Donna/Rose: See the request below. Have you developed anything new since I left?

From: Hall, Rosemary
Sent: Wednesday, March 8, 2017 9:40 AM
To: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Subject: RE: Talking points on Clean Water Rule

Hi, Eric – Please see the question below. I imagine this is something HQ is developing or has already developed for everyone to speak from the same page. Have you seen anything along these lines?

From: Bragan, Mary Jo
Sent: Wednesday, March 08, 2017 9:22 AM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Hall, Rosemary <Hall.Rosemary@epa.gov>
Cc: Bragan, Mary Jo <Bragan.Maryjo@epa.gov>
Subject: FW: Talking points on Clean Water Rule

Tom/Tony/Rosemary-

Mary asked me to find out if there are any new talking points on the Clean Water Rule now that the President signed the order rescinding it? She has a number of speaking engagements coming up and may be asked about the Rule. Have you seen anything official? I sent an email to Larry Lincoln and Phil, as well, but haven't heard back from them yet.

Any information would be very helpful.

Thanks-

Mary Jo

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Wed 3/8/2017 1:03:56 AM
Subject: CWR workgroup
[Workgroup.xlsx](#)

Hi Donna,

I started writing you an email yesterday and didn't send it because I needed to run, and started writing this email to Tony tonight, but realized that I should send you an email first per what I was thinking about last night. Even though we know that no official decisions have been made about **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I've attached it both as an Excel document and have pasted it below. This does not include the folks from Region 5 that I've been asked to include in the cc: category since Region 5 is now the lead region for water. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

And now have to run!

| Name | Office | Comment |
|---|--------|--|
| Cherry, Andrew <Cherry.Andrew@epa.gov> | OECA | |
| Morgan, James <Morgan.James@epa.gov> | OECA | |
| Schefski, Melissa <Schefski.Melissa@epa.gov> | OECA | Is Melissa still working on this issue for OECA? |
| Stokely, Peter <Stokely.Peter@epa.gov> | OECA | |
| Bell, Aaron L. <Bell.Aaron@epa.gov> | OEJ | |
| Wehling, Carrie <Wehling.Carrie@epa.gov> | OGC | |
| Wendelowski, Karyn <wendelowski.karyn@epa.gov> | OGC | |
| Kupchan, Simma | OGC | |
| Cooperstein, Sharon <Cooperstein.Sharon@epa.gov> | OP | |
| Nickerson, William <Nickerson.William@epa.gov> | OP | |
| Alexander, Laurie <Alexander.Laurie@epa.gov> | ORD | |
| Cantilli, Robert <Cantilli.Robert@epa.gov> | ORD | |
| Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov> | OSWER | |
| Clovis, Debora <Clovis.Debora@epa.gov> | OWM | |
| Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov> | OWM | |
| Auerbach, Daniel <Auerbach.Daniel@epa.gov> | OWOW | |
| Christensen, Damaris
<Christensen.Damaris@epa.gov> | OWOW | |
| Downing, Donna <Downing.Donna@epa.gov> | OWOW | |
| Rose Kwok | OWOW | |
| Hoagland, Matt <Hoagland.Matt@epa.gov> | R1 | 3 from R1 (2 managers, 1 staff) |

| | | |
|---|-----|--|
| LeClair, Jacqueline <Leclair.Jackie@epa.gov> | R1 | |
| Sachs, Erica <Sachs.Erica@epa.gov> | R1 | |
| Andreescu, Stephanie
<Andreescu.Stephanie@epa.gov> | R2 | 4 from R2 (1 manager, 1 ORC, 2 staff) |
| Feinmark, Phyllis <Feinmark.Phyllis@epa.gov> | R2 | |
| Montella, Daniel <Montella.Daniel@epa.gov> | R2 | |
| Montgomerie, Robert
<Montgomerie.Robert@epa.gov> | R2 | |
| Lapp, Jeffrey <lapp.jeffrey@epa.gov> | R3 | 2 from R3 (2 manager types, but no Stef) |
| Martinsen, Jessica <Martinsen.Jessica@epa.gov> | R3 | |
| Able, Tony <Able.Tony@epa.gov> | R4 | 4 from R4 – still include Mary Jo?, who is Mike? |
| Bragan, Mary Jo <Bragan.Maryjo@epa.gov> | R4 | |
| Mitchell, Mike <Mitchell.Michael@epa.gov> | R4 | |
| Somerville, Eric <Somerville.Eric@epa.gov> | R4 | |
| Melgin, Wendy <melgin.wendy@epa.gov> | R5 | 4 from R5 (2 managers, 2 staff) |
| Schaller, Andrea <schaller.andrea@epa.gov> | R5 | |
| Swenson, Peter <swenson.peter@epa.gov> | R5 | |
| Yu, Yone <yu.yone@epa.gov> | R5 | |
| Fontenot, Alison <Fontenot.Alison@epa.gov> | R6 | 2 from R6 (1 manager, 1 staff) |
| Martinez, Maria <Martinez.Maria@epa.gov> | R6 | |
| Chamberlain, Eliodora
<Chamberlain.Eliodora@epa.gov> | R7 | 4 from R7 (1 manager, 3 staff) |
| Daniels, Jason <Daniels.Jason@epa.gov> | R7 | |
| Horchem, Brad <horchem.brad@epa.gov> | R7 | |
| Schafer, Jeannette <schafer.jeannette@epa.gov> | R7 | |
| Hamilton, Karen <Hamilton.Karen@epa.gov> | R8 | 2 from R8 (1 manager, 1 staff) - is Julia still on detail? |
| McCarthy, Julia <McCarthy.Julia@epa.gov> | R8 | |
| Brush, Jason <Brush.Jason@epa.gov> | R9 | 2 from R9 (1 manager, 1 staff) |
| Leidy, Robert <Leidy.Robert@epa.gov> | R9 | |
| Dean, Heather <Dean.Heather@epa.gov> | R10 | 5 from R10 (1 manager, 4 staff) |
| Nadeau, Tracie <Nadeau.Tracie@epa.gov> | R10 | |
| Peak, Tracy <Peak.Tracy@epa.gov> | R10 | |
| Szalay, Endre <Szalay.Endre@epa.gov> | R10 | |
| Szerlog, Michael <Szerlog.Michael@epa.gov> | R10 | |

I was just looking at our email list for the CWR workgroup and was wondering about the Region 4 contacts that are on it.

Obviously, you and Eric are both on it as the Region 4 manager and staff lead, respectively, but I just noted that Mike Mitchell is as well and realized that I wasn't sure what his role is. Is he supposed to be on these emails? Also Mary Jo is on the email list, but that might be because Region 4 was the lead region for water last year, but now Region 5 has asked that their folks be added since they are now the lead region. Is okay to take Mary Jo off the emails?

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]
From: Kwok, Rose
Sent: Wed 3/8/2017 12:28:15 AM
Subject: RE: some thoughts for discussion about next steps
WOTUS2 policy and process asks v2.docx
people tasks WOTUSredo v2.docx

Thanks, Damaris, for taking a first cut. I have some thoughts on the Process Options piece (not attached) but didn't have time to write them all down. Here are my thoughts on the other two.

Deliberative Process / Ex. 5

One thing that I'll need management guidance on is if

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I didn't see a good place to put it on any of the documents since it's my request to our management and not our management's request to senior management.

I think we should

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, March 03, 2017 10:44 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: some thoughts for discussion about next steps

Are we meeting sometime today?

To: Downing, Donna[Downing.Donna@epa.gov]
From: Penman, Crystal
Sent: Tue 3/7/2017 7:33:39 PM
Subject: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**

Any materials/agenda for this meeting? Please advise.

Subject: Clean Water Rule Call in **Nonresponsive Conference Code/ Ex. 6**
Location: 3233 WJCE

Start: Wed 3/8/2017 11:00 AM
End: Wed 3/8/2017 11:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike
Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John;
Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie;
Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen,
Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter,
Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William;
Stokely, Peter
Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy;
Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Dravis,
Samantha

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kupchan, Simma[Kupchan.Simma@epa.gov]
From: Wehling, Carrie
Sent: Tue 3/7/2017 4:34:57 PM
Subject: RE: For quick review: talking points regarding why the WOTUS-2 needs to be a joint rulemaking with Army.

Deliberative Process / Ex. 5 Thanks, Donna.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna

Sent: Tuesday, March 07, 2017 10:01 AM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Cc: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>

Subject: For quick review: talking points regarding why the WOTUS-2 needs to be a joint rulemaking with Army.

Hi OGCers:

We understand an issue likely to arise during Mike Shapiro's meeting with Army's Doug

Lamont is whether **Deliberative Process / attorney-client Ex. 5** At
yesterday's meeting Mike requested some talking points highlighting key reasons for **Deliberative Process / attorney-client Ex. 5**
Deliberative Process / attorney-client Ex. 5 Attached are some TPs that might be helpful. The TPs reflect review by
John, Mindy, and Rose (thanks!), and Ann asked that I get OGC review as well.

Mike's meeting is this afternoon, so any thoughts you might have would be particularly helpful before noon. The TPs are short. If you send your edits to me, I'll quickly incorporate and re-circulate a clean version (and because of the need-for-speed, cc'ing everybody on this email would be helpful).

Thanks!

Donna

To: Downing, Donna[Downing.Donna@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]
From: Campbell, Ann
Sent: Tue 3/7/2017 2:53:32 PM
Subject: RE: As requested: talking points regarding why the WOTUS-2 needs to be a joint rulemaking with Army.

Donna, can you have OGC do a quick review of these? Thanks.

From: Downing, Donna
Sent: Tuesday, March 07, 2017 9:39 AM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: As requested: talking points regarding why the WOTUS-2 needs to be a joint rulemaking with Army.

Hi Mike (and others):

We understand an issue likely to arise during your meeting with Army's Doug Lamont is whether Deliberative Process / Ex. 5 At yesterday's meeting you'd requested some talking points highlighting key reasons for Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Attached are some TPs that might be helpful. The TPs reflect review by John, Mindy, and Rose (thanks!), and John suggested I send them directly to you.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Flaharty, Stephanie[Flaharty.Stephanie@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Evalenko, Sandy
Sent: Tue 3/7/2017 12:41:05 PM
Subject: Your FRNs published yesterday

FYI --

2 OW FRNs published today --

1. WOTUS FRN

Intention to Review and Rescind or Revise Clean Water Rule, 12532 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04312.pdf>

<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04312.htm>

2. FRN extending the public comment period one month published today-- the day comments would have been due to EPA.

The comment period is moved out 30 days from March 6th to April 5 Requests for Nominations: Period to Review Materials to Inform Derivation of a Water

Concentration Value for Lead in Drinking Water, 12591 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-03466.pdf>

<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-03466.htm>

-----Original Message-----

From: EPA Federal Register [mailto:envsubset@epa.gov]

Sent: Monday, March 06, 2017 10:15 AM

To: Federal Register documents <epafr-all@lists.epa.gov>

Subject: [epafr-all] Table of Contents, March 6, 2017

A single listserv is used to send a copy of the Federal Register table of contents to each of the previous list subscribers. The e-mail includes links and topic tags for the notices that were previously included in the Environmental Subset Web site and topical listservs. It also includes the table of contents for the Federal Register of that day. Subscribers no longer receive the full-text of FR notices. The official source for the electronic Federal Register is the Government Printing Office (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>). More information is also available from Regulations.gov (<http://www.regulations.gov/>).

AIR

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Granting Petitions to Add n-Propyl Bromide, 12589 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04168.pdf>

<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04168.htm>

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06/pdf/2017-04303.pdf
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04303.htm>

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<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04247.htm>

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<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04279.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04279.htm>

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Risk Evaluation Scoping Efforts under TSCA for Ten Chemical Substances; Reopening of Comment Period, 12589-12590 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04316.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04316.htm>

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12590-12591
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04166.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04166.htm>

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
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<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04167.htm>

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<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-03466.htm>

Intention to Review and Rescind or Revise Clean Water Rule, 12532 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04312.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04312.htm>

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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Use the listserver's web interface at https://lists.epa.gov/read/all_forums/ to manage your subscription.

For problems with this list, contact epafr-all-Owner@lists.epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Mon 3/6/2017 7:50:00 PM
Subject: WOTUS2 next steps 3-6-17.docx
WOTUS2 next steps 3-6-17.docx

A drafty draft but my thoughts of what was asked for at today's meeting. If I'm completely off base feel free to use for scrap. ☺

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 3/6/2017 4:20:00 PM
Subject: FW: CWR - Region 5 lead region

Donna – these folks from Region 5 should be added to our CWR Workgroup distribution list since Region 5 is now the lead water region. Thanks!

From: Schaller, Andrea
Sent: Monday, March 06, 2017 11:17 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: CWR - Region 5 lead region

FYI.

From our WD. Chris Korleski (WD Director), Tim Henry (Associate WD Director), Kate Balasa (lead Region Coordinator).

Andrea

From: Swenson, Peter
Sent: Monday, March 6, 2017 10:13 AM
To: Schaller, Andrea <schaller.andrea@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: CWR - Region 5 lead region

If they want Division management, we could add Chris Korleski and Tim Henry. Kate Balasa is our lead Region coordinator so I presume she would be on. I assume you would be on. I'll let Wendy speak for herself.

Peter

From: Schaller, Andrea

Sent: Monday, March 06, 2017 10:06 AM

To: Melgin, Wendy <melgin.wendy@epa.gov>; Swenson, Peter <swenson.peter@epa.gov>

Subject: CWR - Region 5 lead region

Importance: High

Peter and Wendy

HQ wants to know who needs to be added to the CWR workgroup as Region 5 is the lead water region. I believe last go around Region 4 had their WD and a front office person (Mary Jo) and also tech people (Sommerville).

Andrea

Andrea Schaller

USEPA-Region 5

77 W. Jackson Blvd, WW-16J

Chicago, IL 60604

schaller.andrea@epa.gov

312-886-0746

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Thomas, Elizabeth[Thomas.Elizabeth@epa.gov]
From: Nicole Owens
Sent: Fri 3/3/2017 10:18:02 PM
Subject: FR Dailies: Notice of Intention to Review and Rescind or Revise the Clean Water Rule is about to publish in the FR.

Your document is about to publish in the Federal Register. This publication date has been confirmed with the Office of the Federal Register.

Title: Notice of Intention to Review and Rescind or Revise the Clean Water Rule

FRL #: 9959-93-OW

Docket #:

Published Date: 03/06/2017

To: Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Wed 3/1/2017 10:21:13 PM
Subject: RE: For discussion at Th 10am Wetlands General meeting: draft schedule for revised "waters of the US" proposed reg to OMB

Hmmm.... Haven't seen that cancelation yet. Maybe check in w Ann

From: Downing, Donna
Sent: Wednesday, March 01, 2017 5:18 PM
To: Goodin, John <Goodin.John@epa.gov>
Subject: FW: For discussion at Th 10am Wetlands General meeting: draft schedule for revised "waters of the US" proposed reg to OMB

Hey John –

Just got a cancellation for tomorrow morning's 10am meeting with Mike. Well, they have the draft schedule for discussion at some point. Please let me know as you hear plans for moving forward, including discussing schedule. Thanks!

Have a great evening.

Donna

From: Downing, Donna
Sent: Wednesday, March 01, 2017 5:13 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Karyn Wendelowski <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Ann Campbell <Campbell.Ann@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Frithsen, Jeff <Frithsen.Jeff@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: For discussion at Th 10am Wetlands General meeting: draft schedule for revised

"waters of the US" proposed reg to OMB

Hi everybody:

Attached please find for discussion at tomorrow's meeting a "Draft Schedule for a Revised 'Waters of the US' Proposed Regulation to OMB". The schedule consists of two pieces: a 1-page Gantt chart, and a 3-page further discussion of steps. I'll bring hardcopies to our meeting. Thanks to everybody who provided input.

See you tomorrow!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Loop, Travis
Sent: Wed 3/1/2017 10:13:25 PM
Subject: Automatic reply: For discussion at Th 10am Wetlands General meeting: draft schedule for revised "waters of the US" proposed reg to OMB

I am **Personal Matters / Ex. 6**

I will be checking email sporadically.

If you need immediate assistance please contact Allison Dennis at dennis.allison@epa.gov.

Thank you.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Miller, Clay
Sent: Wed 3/1/2017 8:07:06 PM
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-5060

fyi

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, March 01, 2017 2:59 PM
To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-5060

Control AX-17-000-5060 has been assigned to your office on 3/1/17 2:58 PM by Yvonne Smothers.
Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-17-000-5060

Control Subject: Urge - EPA propose and work to publish the exact waters where the proposed Waters of the United States rule would apply under the Clean Water Act.

From: Martin, Paul D; Martin, Joyce

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Miller, Clay
Sent: Wed 3/1/2017 4:44:22 PM
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-4991

Another WOTUS

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, March 01, 2017 10:40 AM
To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-4991

Control AX-17-000-4991 has been assigned to your office on 3/1/17 10:39 AM by Yvonne Smothers. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-17-000-4991
Control Subject: Waters of the United States
From: Nally, Joseph L.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Mark Ryan
Sent: Tue 2/21/2017 5:34:35 PM
Subject: CWA Podcast

FYI. I was recently interviewed by The Water Values podcast about the CWA. I talk about the WOTUS rule.

-Mark

<http://thewatervalues.com/2017/02/21/current-issues-clean-water-act-mark-ryan/>



Mark A. Ryan
Principal
RYAN & KUEHLER PLLC
P.O. Box 3059 Winthrop, WA 98862
(509) 557-5447 www.ryankuehler.com

CONFIDENTIALITY STATEMENT: This message contains information that may be confidential and protected by the attorney-client privilege. If you received this message in error, please notify the sender immediately and delete the message.

To: Kwok, Rose[Kwok.Rose@epa.gov]; Bravo, Antonio[Bravo.Antonio@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Loop, Travis
Sent: Thur 2/9/2017 8:05:41 PM
Subject: RE: stay language

I think it is fine to include a link to the web page.

It depends what type of link updates you are talking about... broken links can be fixed...outdated links fixed...etc not new ones.

Travis Loop

Director of Communications
Office of Water

U.S. Environmental Protection Agency

202-870-6922

loop.travis@epa.gov

From: Kwok, Rose
Sent: Thursday, February 09, 2017 2:34 PM
To: Loop, Travis <Loop.Travis@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: stay language

Hi Travis,

OGC has approved this generic language for responses regarding the rule. Obviously, it doesn't answer the definitely more specific questions that we've been receiving, but it at least serves as a generic response.

Usually, I would give a link to the website – but I won't if it's still going to be archived. Have we heard any updates on that? There are a few links on the website that need to be updated – is it worth updating those in the interim?

Here's the generic language.

Deliberative Process / Ex. 5

From: Goodin, John
Location: Mindy's office
Importance: Normal
Subject: Accepted: Run-through for CWR briefing
Start Date/Time: Thur 2/9/2017 1:30:00 PM
End Date/Time: Thur 2/9/2017 2:30:00 PM

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Nandi, Romell
Sent: Wed 2/8/2017 3:03:14 PM
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Great – thanks, all.

From: Christensen, Damaris
Sent: Wednesday, February 08, 2017 10:02 AM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Hey Romell – Here's the Clean Water Rule factsheet for John's review.

Karyn has looked it over although I had to make a couple tweaks after getting her edits to make it compliant with the form we were given and to make it fit on one page.

Damaris

From: Able, Tony
Sent: Friday, February 03, 2017 1:47 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

No PPTs for this. It is the sheet that will go into their briefing book for the prep for congressional hearings

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Christensen, Damaris

Sent: Friday, February 03, 2017 1:34 PM

To: Able, Tony <Able.Tony@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: Re: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS
NEEDED by 10am on Wed, Feb. 8

I can work on a draft to circulate by Monday morning- unless Someone else wants to take the first stab. I'd been working to pull together PowerPoint slides. Is that replaced by this?

Damaris

Sent from my iPhone

On Feb 3, 2017, at 1:23 PM, Able, Tony <Able.Tony@epa.gov> wrote:

Team Leads and others: See below the briefing papers we need to pull together for the

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Eisenberg, Mindy

Sent: Friday, February 03, 2017 12:26 PM

To: Able, Tony <Able.Tony@epa.gov>

Subject: FW: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Importance: High

Hi Tony,

Please work with your staff and send me the drafts by COB Tuesday.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Nandi, Romell

Sent: Friday, February 03, 2017 12:16 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>


Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS
NEEDED by 10am on Wed, Feb. 8

Importance: High

OWOW Managers:

The OWOW topics below, from the original potential topic list we submitted to OW, **have been identified as needing fact sheets** for the OW AA nominee's briefing book:

Deliberative Process / Ex. 5

Attached is a Word template for how the fact sheet should look (using  as an example) – please look at it closely.

A few general comments:

- These factsheets should be written at a fairly high level. Exhaustive detail is not necessary, just the main message in plain language.
- OW is looking for short, direct bullets. Bullets should be only one sentence in length (except in the background section) and each section should have no more than three bullets (again except for the background section). In a hearing setting, our nominee will need to have the main message in a clear and easily accessible format. Short, direct bullets achieve that.
- Factsheets should be no more than one page in length.

I will be sending the draft fact sheets to John as soon as I get them for his review. Although I am asking for these **no later than 10am on Wednesday the 8th**, obviously if you have them sooner, send them as soon as they are ready since it will allow John more time to review and for us to edit as needed.

Thanks.

Romell

566-1203

<Confirmation Hearing Factsheet Example - 02-01-17.docx>

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Wed 2/8/2017 2:53:22 PM
Subject: looks like effective date was Deliberative Process / Ex. 5

Am I reading this right?

<https://www.epa.gov/cleanwaterrule/clean-water-rule-litigation-statement>

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Able, Tony
Sent: Wed 2/8/2017 4:00:29 AM
Subject: Re: Can you review factsheet for confirmation hearing?

Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 7, 2017, at 8:32 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

Damaris

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 8:30 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>
Subject: RE: Can you review factsheet for confirmation hearing?

Here's the revised version. Thanks all.

From: Christensen, Damaris

Sent: Tuesday, February 07, 2017 6:07 PM

To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: RE: Can you review factsheet for confirmation hearing?

I just got a bunch of edits from Tony that are more than minor – will send another version after Personal Matters / Ex. 6

From: Christensen, Damaris

Sent: Tuesday, February 07, 2017 5:40 PM

To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Subject: Can you review factsheet for confirmation hearing?

We are supposed to send to OW by 10 am tomorrow, sorry for the short turnaround time, I just got final comments.

Damaris

<Confirmation Hearing Factsheet CWR- 02-07-17.docx>

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Able, Tony
Sent: Tue 2/7/2017 10:45:27 PM
Subject: RE: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx
Confirmation Hearing Factsheet CWR- 02-06-17 ed (002).docx

Damaris: See my comments attached. I understand that Donna will be looking at the background section per your request.

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 3:56 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>
Subject: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Tony and Mindy – are you likely to be able to review before tomorrow morning?

Donna – can you check out this version, which reflects Dan’s additional suggestions of today?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

D

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 10:25:33 PM
Subject: RE: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from John, Mindy, Damaris, and Rose (thanks, folks!)

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Nandi, Romell
Sent: Tue 2/7/2017 10:24:41 PM
Subject: RE: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Donna – FYI, in case you were confused by my last email, for meetings that Layne Bangerter is going to be attending, Mike is personally reviewing materials (we send to just Ann for Mike) before Crystal Penman posts them on the invite. So it is possible you will get comments on the presentation from Mike via Ann.

Romell

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from John, Mindy, Damaris, and Rose (thanks, folks!)

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Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 9:16:26 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Lol, ok ☺

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:15 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I retitled the slides of your retitled slides on the version on the G drive at

Nonresponsive Internal URL/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

My emails are still trying to send...

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 4:09 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Note that I retitled a bunch of slides...

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Thanks in advance for your help.

Donna

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Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 9:15:22 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I retitled the slides of your retitled slides on the version on the G drive at

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Nonresponsive Internal URL/ Ex. 6

My emails are still trying to send...

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Sent: Tuesday, February 07, 2017 4:08 PM
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Deliberative Process / Ex. 5

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Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Thanks in advance for your help.

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Jurisdiction Team Leader

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 9:09:11 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Note that I retitled a bunch of slides...

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

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Deliberative Process / Ex. 5

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Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Deliberative Process / Ex. 5

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 9:07:59 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
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Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 8:55:57 PM
Subject: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx
Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Tony and Mindy – are you likely to be able to review before tomorrow morning?

Deliberative Process / Ex. 5

D

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 8:54:41 PM
Subject: Re: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 7, 2017, at 3:52 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 3:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Thanks, Damaris, for your input and formatting. I just got some additional suggestions from Mindy and John. I'll will make the latest suggested revisions to the version you've sent.

Deliberative Process / Ex. 5

Stay tuned for the next edition!

Donna

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 8:52:01 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 3:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

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To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

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To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 8:51:42 PM
Subject: Re: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I've got some edits that are churning in my sent box (1 of 3 messages haven't yet sent. My internet has been sloooooow). I've told a Donna where I've saved the edits on the G drive, in the Briefing Materials on WUS folder

Sent from my iPhone

On Feb 7, 2017, at 3:43 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Thanks, Damaris, for your input and formatting. I just got some additional suggestions from Mindy and John. I'll will make the latest suggested revisions to the version you've sent.

Deliberative Process / Ex. 5

Stay tuned for the next edition!

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From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Deliberative Process / Ex. 5

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Sent: Tuesday, February 07, 2017 1:09 PM

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Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>

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To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Auerbach, Daniel
Sent: Tue 2/7/2017 7:16:49 PM
Subject: RE: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Given the deadline, opting against a commented draft.

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 12:59 PM
To: Able, Tony <Able.Tony@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>;

Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>

Subject: RE: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

In case anyone has comments on this – it already reflects comments from Rose and Donna, who of course should feel free to comment again.

Damaris

From: Able, Tony

Sent: Tuesday, February 07, 2017 12:42 PM

To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>

Subject: FW: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Importance: High

FYI

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Nandi, Romell

Sent: Tuesday, February 07, 2017 12:03 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>

Subject: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Importance: High

Just a reminder that these are due tomorrow at 10am. Thanks.

(Gale – I got yours).

Romell

From: Nandi, Romell

Sent: Friday, February 03, 2017 12:16 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>


Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Importance: High




OWOW Managers:

The OWOW topics below, from the original potential topic list we submitted to OW, **have been identified as needing fact sheets** for the OW AA nominee's briefing book:

Deliberative Process / Ex. 5

Attached is a Word template for how the fact sheet should look (using  as an example) – please look at it closely.

A few general comments:

-  These factsheets should be written at a fairly high level. Exhaustive detail is not necessary, just the main message in plain language.
-  OW is looking for short, direct bullets. Bullets should be only one sentence in length (except in the background section) and each section should have no more than three bullets (again except for the background section). In a hearing setting, our nominee will need to have the main message in a clear and easily accessible format. Short, direct bullets achieve that.
-  Factsheets should be no more than one page in length.

I will be sending the draft fact sheets to John as soon as I get them for his review. Although I am asking for these **no later than 10am on Wednesday the 8th**, obviously if you have them sooner, send them as soon as they are ready since it will allow John more time to review and for us to edit as needed.

Thanks.

Romell

566-1203

To: Able, Tony[Able.Tony@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 5:59:06 PM
Subject: RE: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW
Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

In case anyone has comments on this – it already reflects comments from Rose and Donna, who of course should feel free to comment again.

Damaris

From: Able, Tony
Sent: Tuesday, February 07, 2017 12:42 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
Subject: FW: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW
Importance: High

FYI

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Nandi, Romell

Sent: Tuesday, February 07, 2017 12:03 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>

Subject: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Importance: High

Just a reminder that these are due tomorrow at 10am. Thanks.

(Gale – I got yours).

Romell

From: Nandi, Romell

Sent: Friday, February 03, 2017 12:16 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>


Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Importance: High

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566-1203

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; FertikEdgerton, Rachel[FertikEdgerton.Rachel@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Able, Tony
Sent: Tue 2/7/2017 5:42:09 PM
Subject: FW: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

FYI

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566-1203

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Able, Tony[Able.Tony@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Mon 2/6/2017 7:26:08 PM
Subject: RE: Shapiro wants materials for Thursday's CWR meeting early (by 5pm tomorrow)...

I'm actually not sure whether the call to draft TPs for the AA is related to this and how it relates to the powerpoints Donna is working on.

But, especially if it is related, I'd appreciate comments on the draft I sent around this morning, around 9:30 I think. I struggled with what to say.

Damaris

From: Eisenberg, Mindy
Sent: Monday, February 06, 2017 12:45 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: Re: Shapiro wants materials for Thursday's CWR meeting early (by 5pm tomorrow)...

We can do that

Sent from my iPhone

On Feb 6, 2017, at 12:40 PM, Nandi, Romell <Nandi.Romell@epa.gov> wrote:

All:

As you know, we usually send materials for OW meetings to the front office by 3pm the day before the meeting. However, Ann asked me to ask you to send the CWR materials for Thursday's 1pm meeting early. So please send me those materials to me **by 5pm tomorrow**.

If that is going to be a problem, please let me know ASAP.

Thanks.

Romell

566-1203

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Goodin, John[Goodin.John@epa.gov]
From: Nandi, Romell
Sent: Mon 2/6/2017 5:40:16 PM
Subject: Shapiro wants materials for Thursday's CWR meeting early (by 5pm tomorrow)...

All:

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Romell

566-1203

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Mon 2/6/2017 2:21:43 PM
Subject: Confirmation Hearing Factsheet CWR- 02-06-17.docx
Confirmation Hearing Factsheet CWR- 02-06-17.docx

Here's a drafty draft for review. I tried to keep in mind the purpose – looks like a confirmation hearing – and so the TPs might be different than usual.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Donna Downing
Sent: Mon 2/6/2017 12:17:04 AM
Subject: Emailing: Outline -- CWR presentation to transition team v1
[Outline -- CWR presentation to transition team v1.docx](#)

Your message is ready to be sent with the following file or link attachments:

Outline -- CWR presentation to transition team v1

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Miller, Clay[Miller.Clay@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Hunter, Christopher
Sent: Fri 2/3/2017 8:54:23 PM
Subject: FW: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8
Confirmation Hearing Factsheet Example - 02-01-17.docx
404 Program Implementation factsheet.docx

Personal Matters / Ex. 6 so I pulled from the bulleted talking points we did last week to develop a first draft of the 404 program implementation factsheet. Do we want to share this with the whole branch for review, or just us?

From: Able, Tony
Sent: Friday, February 03, 2017 1:24 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
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Importance: High

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Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Eisenberg, Mindy

Sent: Friday, February 03, 2017 12:26 PM

To: Able, Tony <Able.Tony@epa.gov>

Subject: FW: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS
NEEDED by 10am on Wed, Feb. 8

Importance: High

Hi Tony,

Please work with your staff and send me the drafts by COB Tuesday.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Nandi, Romell

Sent: Friday, February 03, 2017 12:16 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>


Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS
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From: Hunter, Christopher
Sent: Fri 2/3/2017 8:18:38 PM
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Just FYI – for the topics identified that WARRB might be responsible for :

Deliberative Process / Ex. 5

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Sent: Friday, February 03, 2017 1:24 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
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Wetlands Division

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U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Eisenberg, Mindy

Sent: Friday, February 03, 2017 12:26 PM

To: Able, Tony <Able.Tony@epa.gov>

Subject: FW: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS
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Hi Tony,

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Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

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Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

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Cc: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Able, Tony
Sent: Fri 2/3/2017 6:47:04 PM
Subject: RE: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

No PPTs for this. It is the sheet that will go into their briefing book for the prep for congressional hearings

Tony Able, Acting Chief

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Sent: Friday, February 03, 2017 1:34 PM
To: Able, Tony <Able.Tony@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
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Cc: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Fri 2/3/2017 6:33:46 PM
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Sent: Fri 2/3/2017 6:23:52 PM
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[Confirmation Hearing Factsheet Example - 02-01-17.docx](#)

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Attached is a Word template for how the fact sheet should look (using  as an example) – please look at it closely.

A few general comments:

- These factsheets should be written at a fairly high level. Exhaustive detail is not necessary, just the main message in plain language.
- OW is looking for short, direct bullets. Bullets should be only one sentence in length (except in the background section) and each section should have no more than three bullets (again except for the background section). In a hearing setting, our nominee will need to have the main message in a clear and easily accessible format. Short, direct bullets achieve that.
- Factsheets should be no more than one page in length.

I will be sending the draft fact sheets to John as soon as I get them for his review. Although I am asking for these **no later than 10am on Wednesday the 8th**, obviously if you have them sooner, send them as soon as they are ready since it will allow John more time to review and for us to edit as needed.

Thanks.

Romell

566-1203

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Christensen, Damaris
Sent: Wed 2/1/2017 9:27:05 PM
Subject: RE: Heads up - briefings to be scheduled

Mindy,

I just chatted with Rose and we were wondering if should we start pulling together slides from previous briefings? Or wait for guidance on what they are looking for? From what you wrote I'm not even sure they are looking for a powerpoint.

D

From: Eisenberg, Mindy
Sent: Tuesday, January 31, 2017 7:58 PM
To: Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>
Subject: Heads up - briefings to be scheduled

Hi Folks,

I wanted to give you a heads up that it looks like two briefings for the new team will be scheduled next week. Still waiting for some guidance,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

For CWR – we don't need to spend time on the litigation since they already got that, and should focus on the rule itself. I will send along more guidance from Mike via Ann when I get it.

For both briefings, please let me know who should be invited. Ann will be working on scheduling them and so we can work backwards from there to move the briefings up the chain for review.

Thanks much!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
From: Evans, David
Sent: Wed 2/1/2017 5:42:56 PM
Subject: FW: OW-relevant Pruitt QFR responses
[2017-01-31 Pruitt OW QFRs.docx](#)
[Pruitt QFRs.pdf](#)

Sent from my Windows Phone

From: [Nandi, Romell](#)
Sent: 1/31/2017 5:33 PM
To: [OWOW Managers Group](#)
Subject: FYI: OW-relevant Pruitt QFR responses

FYI -

From: Klasen, Matthew
Sent: Tuesday, January 31, 2017 5:12 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Conerly, Octavia <Conerly.Octavia@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Fontaine, Tim <Fontaine.Tim@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>
Cc: Borum, Denis <Borum.Denis@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Subject: OW-relevant Pruitt QFR responses

Hi everyone,

As you likely know, Administrator-nominee Pruitt responded to a long list of Questions for the Record from Senate EPW Committee members late last week, following up from his confirmation hearing a couple weeks ago. This was reported in Inside EPA and a few other outlets.

Deliberative Process / Ex. 5 our
water team thought that pulling out the OW-relevant questions and responses might be

generally helpful, if only to avoid interested folks needing to wade through a 245-page document. Toward that end, see attached for a shorter-but-still-not-short 42-page document. This focuses on the most OW-relevant responses, and does not include responses with only passing references to water, or that don't directly focus on OW's work. (See caveat at the top of p. 1.)

I've also attached the original PDF of all Qs&As in case that's of interest to folks with a surplus of available patience and time.

Senate EPW is scheduled to vote on Administrator-nominee Pruitt tomorrow at a business meeting at 10:45 am, with reports this afternoon suggesting that Democrats may choose to not show up and/or walk out. We'll see. Live stream of the meeting is likely to be available

here: <http://www.epw.senate.gov/public/index.cfm/hearings?ID=87E06C7E-6037-4CE3-A594-D0823491D2E4>

Let Sven, Denis, Kevin, or me know if you have any questions.

Thanks,

Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443P
202 566 0780

Personal Phone / Ex. 6

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Wed 2/1/2017 3:04:20 PM
Subject: is there a call-in for the CWR meeting?

Is the meeting happening? I thought it was canceled but it is still on my calendar.

To: Downing, Donna[Downing.Donna@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
From: Christensen, Damaris
Sent: Mon 1/30/2017 6:42:08 PM
Subject: stay language

Just pulling together material for a generic web comment response and want to make sure the language about the stay is still correct – or should it be updated given Supreme Court decisions?

Deliberative Process / attorney client Ex. 5

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Wetlands-HQ
Sent: Mon 1/30/2017 4:35:18 PM
Subject: FW: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

The latest...

-----Original Message-----

From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov]
Sent: Thursday, January 26, 2017 6:25 PM
To: Wetlands-HQ <Wetlands-HQ@epa.gov>
Subject: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Submitted on 01/26/2017 6:24PM

Submitted values are:

Name:
Email:
Comments:

Hello,

I'd like your comments on what it will mean for wetlands, oceans and watersheds, our clean water supply if Donald Trump does remove this rule, which he has said he will do?

Web Area: Clean Water Rule

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; FertikEdgerton, Rachel[FertikEdgerton.Rachel@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Able, Tony
Sent: Wed 1/25/2017 7:57:11 PM
Subject: Check-in with Mindy - WARRB communications



[WARRB_TransitionBriefingDeck.pptx](#)



[WARRB_TransitionCheatsheet.xlsx](#)

I just had my weekly WARRB meeting with Mindy. We are on the right track but here is some clarification.

Work on our key messages (section 2) first. Examples:

-
-
-
-
-
-

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-

Deliberative Process / Ex. 5

- Others?

As I said, it appears that we are on the right track already. She would like these key messages to be where we focus our attention first.

Timeline.

- Is it possible to have these key messages ready for Mindy's review by COB 1/10/17. She will review them on our SharePoint site and give us feedback
- Make adjustments to her comments ???
- John's review ???
- Share with the Regions ??
- Continue work on the other 2 areas of our communications packages (update existing briefings and discuss furthering program/process improvements)

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6 (Cell)

From: Able, Tony

Sent: Tuesday, January 24, 2017 5:29 PM

To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany

<bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
Cc: Brown, Sineta <Brown.Sineta@epa.gov>
Subject: FW: Updating fact sheets and PPTs

Yes, please look these over. This will be the topic of our WARRB meeting Thursday morning at 9:30.

Note also that I have scheduled WARRB meetings for every Thursday going forward. The reason being that there is a lot going on and I want to keep you informed of updates and engaged on activities for the transition. If we determine that we don't need a particular meeting then we can cancel for that week.

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6 Cell

From: Auerbach, Daniel

Sent: Tuesday, January 24, 2017 5:02 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: RE: Updating fact sheets and PPTs

If you're able, please take a moment to scan the attached files (also in the [Transition](#) folder) in anticipation of a progress check during Thursday morning's staff meeting.

The "cheatsheet" is pretty self-explanatory. The slide deck is conceived as a starting point to a "best foot forward" presentation of WARRB to those less familiar with the group's valuable and obligatory work. The internal structure ([Deliberative Process / Ex. 5](#)) offers one possible subdivision, with the potential to extract alternative subsets of slides. The slides are formatted to facilitate notes on printed versions.

At this point the primary question is whether to:

a) make modest further revisions to the "best foot forward" as determined during the meeting, then shift focus to an updated library of separate, more detailed issue briefings (following a comparable format)

or

b) keep the focus here for more substantial revisions/additions to structure, content and/or style

Thanks

From: Auerbach, Daniel

Sent: Tuesday, January 17, 2017 1:17 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Updating fact sheets and PPTs

Hope everyone had a great MLK! We managed a pretty good haul of trash and plastic bottles out of our local Anacostia trib (Paint Branch)...

Great to see the set of materials growing in the [Transition](#) folder, and/but this is another reminder to give your folders and files a look if you haven't yet had a chance.

I started an [overview index doc](#) to which I expect to add links etc. as things progress. Please feel free to comment/edit (should support simul-editing). Brittany and I expect to decide on Thursday whether or not to adopt a consistent format/template and migrate content.

From: Auerbach, Daniel

Sent: Thursday, January 12, 2017 5:51 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen

<bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>

Subject: RE: Updating fact sheets and PPTs

Thanks Rose! And thanks Tim for getting this underway...if anyone's wondering, Tim gets the prize for first factsheet AND first powerpoint. Keeping Tony's timeline in mind, I'll appreciate seeing what others can put into the hopper tomorrow.

From: Kwok, Rose

Sent: Thursday, January 12, 2017 1:45 PM

To: Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>

Subject: FW: Updating fact sheets and PPTs

Hi Folks, here is the folder that I created on the Sharepoint site for the documents we discussed today. I'll make sure that everyone has access:

Go to [Transition](#)

To: Wetlands-HQ[Wetlands-HQ@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 1/24/2017 11:23:40 PM
Subject: RE: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

I think I would

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

-----Original Message-----

From: Wetlands-HQ
Sent: Tuesday, January 24, 2017 5:55 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Do you have any suggestions about how to answer this one?

-----Original Message-----

From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov]
Sent: Sunday, January 22, 2017 9:48 PM
To: Wetlands-HQ <Wetlands-HQ@epa.gov>
Subject: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Submitted on 01/22/2017 9:48PM
Submitted values are:

Name: Personal Matters / Ex. 6

Email: Personal Email / Ex. 6

Comments: Florida has this all wrong, As I read through all the comments it appears that everyone is drunk on the water Management District's Kool-Aid I have been working all of the General Consul with Water Management District for the last year and a half. The only reason the State of Florida claims they are already regulating the waters that are apart of your new federal law is because they are using clouded law to overreach there legislative authority as the Federal regulators did before the new better clarified law. To receive more stringent regulations the waters have to be deemed worth of special protection by the Governor's cabinet as stated in 403.061(34) these waters are the following Outstanding Florida Waters, aquatic preserves, areas of critical state concern. To regulate other waters other than the above and those waters as used in the CWA they have to overreach. Basically to mediate the conflict between Federal and state Law the state will have to review there interpretation of 403.031(13) the first part does not grant authority to delineate every little puddle of water on the earth.. The Waters in 403.031(a) and (b) and waters as used in the CWA do

include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. (the general list of examples in the beginning of 403.031(13) is what they are using to claim jurisdiction over everything) ... I had to delete half the email

call me Personal Phone / Ex. 6

Web Area: Clean Water Rule

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Wetlands-HQ
Sent: Tue 1/24/2017 10:54:41 PM
Subject: FW: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Do you have any suggestions about how to answer this one?

-----Original Message-----

From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov]
Sent: Sunday, January 22, 2017 9:48 PM
To: Wetlands-HQ <Wetlands-HQ@epa.gov>
Subject: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Submitted on 01/22/2017 9:48PM
Submitted values are:

Name: **Personal Matters / Ex. 6**
Email: **Personal Email / Ex. 6**

Comments: Florida has this all wrong, As I read through all the comments it appears that everyone is drunk on the water Management District's Kool-Aid I have been working all of the General Consul with

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Water Management District for the last year and a half. The only reason the State of Florida claims they are already regulating the waters that are apart of your new federal law is because they are using clouded law to overreach there legislative authority as the Federal regulators did before the new better clarified law. To receive more stringent regulations the waters have to be deemed worth of special protection by the Governor's cabinet as stated in 403.061(34) these waters are the following Outstanding Florida Waters, aquatic preserves, areas of critical state concern. To regulate other waters other than the above and those waters as used in the CWA they have to overreach. Basically to mediate the conflict between Federal and state Law the state will have to review there interpretation of 403.031(13) the first part does not grant authority to delineate every little puddle of water on the earth.. The Waters in 403.031(a) and (b) and waters as used in the CWA do

include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. (the general list of examples in the beginning of 403.031(13) is what they are using to claim jurisdiction over everything) ... I had to delete half the email

call me **Personal Phone / Ex. 6**

Web Area: Clean Water Rule

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Wetlands-HQ
Sent: Tue 1/24/2017 10:50:35 PM
Subject: FW: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Deliberative Process / Ex. 5

-----Original Message-----

From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov]
Sent: Friday, January 20, 2017 11:25 PM
To: Wetlands-HQ <Wetlands-HQ@epa.gov>
Subject: Form submission from: Clean Water Rule Contact Us About the Clean Water Rule form

Submitted on 01/20/2017 11:24PM

Submitted values are:

Name: Personal Matters / Ex. 6

Email: Personal Email / Ex. 6

Comments:

with the dismantling of EPA initiatives by the Trump administration, will this site be available in the future?
Or is there a set of documents I can download?
Kevin

PS - Also, any idea of the availability of a corresponding website for the Climate Action Plan?
Web Area: Clean Water Rule

From: Wendelowski, Karyn
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Clark, Becki
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Declined: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Indermark, Michele
Sent: Tue 4/4/2017 8:04:54 PM
Subject: Automatic reply: WOTUS Call in: **Nonresponsive Conference Code/ Ex. 6**

I will be on leave the afternoon of Tuesday, April 4. I will check email and voicemail periodically. If you have an urgent issue, please call 202-564-0794.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Balasa, Kate
Sent: Tue 4/4/2017 3:34:48 PM
Subject: RE: WOTUS for WDD Call

Hi Donna,

Is there any chance I can call in to your Thursday call? It would just be for the sake of getting up to speed on things. If so, please forward me the invite.

Thanks for your consideration.

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Sent: Monday, April 03, 2017 4:57 PM
To: Balasa, Kate <balasa.kate@epa.gov>
Subject: RE: WOTUS for WDD Call

Hi Kate –

The call's at 1pm, but I understand John and you have had a subsequent email conversation about having a separate WDD meeting. Please let me know how I can be of help; I'll check with John too.

Donna

From: Balasa, Kate
Sent: Monday, April 03, 2017 11:24 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: WOTUS for WDD Call

Good morning, Donna,

What time do you currently have the WOTUS call scheduled for this Thursday? Per John's email below, I am trying to determine if it might also work for the WDDs to join the call. If not, I will look for another time.

Thanks,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John
Sent: Monday, April 03, 2017 8:18 AM

To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>

Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7129/DC-CCW-OWOW Telecom:

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Initial meeting of informal staff WOTUS-2 workgroup

Start Date/Time: Thur 4/6/2017 5:00:00 PM

End Date/Time: Thur 4/6/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Kwok, Rose
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Tentative: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Ludwig-Monty, Sarah
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 5:00:00 PM
End Date/Time: Thur 4/6/2017 6:00:00 PM

Your meeting was forwarded

Keating, Jim has forwarded your meeting request to additional recipients.

Meeting

Initial meeting of informal staff WOTUS-2 workgroup

Meeting Time

Thursday, April 6, 2017 1:00 PM-2:00 PM.

Recipients

Ludwig-Monty, Sarah

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Christensen, Damaris
Location: 3233 WJCE (OWOW conference room); telecom is in text of invitation below
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/5/2017 3:00:00 PM
End Date/Time: Wed 4/5/2017 4:00:00 PM

To: Balasa, Kate[balasa.kate@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Mon 4/3/2017 8:23:00 PM
Subject: RE: WOTUS for WDD Call

Hi, Kate—apologies if I implied the two meetings should be combined. My sense is that the discussions are a bit different. If we can find a separate time for the WDDs on Thursday or the week of the 17th, that would be better. See below for a purpose statement to accompany an invite.

Give me a call if useful.

Thanks

John

Purpose: to update the WDDs on the status and current process for developing a proposed rule to revise/replace the existing definition of waters of the US.

From: Balasa, Kate
Sent: Monday, April 03, 2017 1:50 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: WOTUS for WDD Call

Hi John,

I am inclined to just go ahead and include the WDDs on the call that Donna has set up for this Thursday (just note that we'll get a range of participation as it may not work with folk's schedules). If you can forward me the invitation I will share with the WDDs and we should be good to go. I only ask that if there are any materials, we get them to the WDDs at least a day in advance of the call (preferably 2 days).

Thanks much,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John

Sent: Monday, April 03, 2017 8:18 AM

To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>

Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

From: Ludwig-Monty, Sarah
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: FW: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Microsoft Outlook
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Meeting Forward Notification: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Your meeting was forwarded

Keating, Jim has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency meeting

Meeting Time

Tuesday, April 4, 2017 1:00 PM-2:00 PM.

Recipients

Ludwig-Monty, Sarah

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Kwok, Rose

Location: DCRoomWest7129/DC-CCW-OWOW Telecom Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

From: Szalay, Endre
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Tentative: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 4:00:00 PM
End Date/Time: Thur 4/6/2017 5:00:00 PM

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Declined: Initial meeting of informal staff WOTUS-2 workgroup
Start Date/Time: Thur 4/6/2017 4:00:00 PM
End Date/Time: Thur 4/6/2017 5:00:00 PM

Your request was declined because there are conflicts.

The conflicts are:

Organizer and Time of Conflicting Meeting

Hurl, Kathy - Thursday, April 6, 2017 12:00:00 PM to Thursday, April 6, 2017 1:00:00 PM

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server 2016

From: Wendelowski, Karyn

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

From: Wendelowski, Karyn
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Dale, David F Jr SES CELRD CELRD (US)
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: [Non-DoD Source] WOTUS-2 interagency meeting (UNCLASSIFIED)
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Dale, David F Jr SES CELRD CELRD (US)

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Tentative: [Non-DoD Source] Discussion of latest draft WOTUS-2 rule text (UNCLASSIFIED)

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

;

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

From: Keating, Jim
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Christensen, Damaris
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Frazer, Brian
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Christensen, Damaris

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

From: Swackhammer, J-Troy
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Wehling, Carrie

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

From: Theis, Joseph
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: DCRoomWest7129/DC-CCW-OWOW

Location: DCRoomWest7129/DC-CCW-OWOW Telecom

Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: Accepted: Discussion of latest draft WOTUS-2 rule text

Start Date/Time: Mon 4/3/2017 5:00:00 PM

End Date/Time: Mon 4/3/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Kwok, Rose
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: Pollins, Mark
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

From: DCRoomWest7129/DC-CCW-OWOW
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS-2 interagency meeting
Start Date/Time: Tue 4/4/2017 5:00:00 PM
End Date/Time: Tue 4/4/2017 6:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kupchan, Simma
Sent: Thur 3/30/2017 9:11:18 PM
Subject: Automatic reply: WOTUS-2 interagency meeting

I am out of the office, returning Monday, April 3. I will return your message when I return.

Thanks,

Simma Kupchan

To: Downing, Donna[Downing.Donna@epa.gov]
From: Cherry, Andrew
Sent: Thur 3/30/2017 9:11:18 PM
Subject: Automatic reply: WOTUS-2 interagency meeting

I am out of the office on March 31st and will reply to your message when I return to the office on April 3rd. If you need assistance before the 3rd, please contact Ben Bahk at 202-564-4293.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Thur 3/30/2017 9:11:18 PM
Subject: Automatic reply: WOTUS-2 interagency meeting

Thank you for your message. I am out of the office and will not be checking email regularly during this time. If you need immediate assistance please contact Christine Ruf.

To: Kwok, Rose[Kwok.Rose@epa.gov]; Flahive, Katie[Flahive.Katie@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Wall, Tom[Wall.Tom@epa.gov]; Hall, Lynda[Hall.Lynda@epa.gov]
From: Goodin, John
Sent: Wed 3/29/2017 12:40:27 PM
Subject: ACTION: RE: Are there any tps on words/CWR?

I'll ask Romell to respond here with the TPs that were OK'd by Mike for addressing outside groups that come in to meet with OW.
Thanks

-----Original Message-----

From: Kwok, Rose
Sent: Tuesday, March 28, 2017 10:38 PM
To: Flahive, Katie <Flahive.Katie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Hall, Lynda <Hall.Lynda@epa.gov>
Subject: Re: Are there any tps on words/CWR?

Hi Katie, I can send you the latest version that I have...will do so when I'm at a computer with full access to Outlook

Sent from my iPhone

> On Mar 28, 2017, at 10:31 PM, Flahive, Katie <Flahive.Katie@epa.gov> wrote:
>
> I'm giving a talk tomorrow at the ag drainage management task force meeting in Illinois, and I was prepared to talk specifically on htf work, however a number of people approached me today to ask if I could mention any updates. I can do so if you can send me any prepped tps or a brief update. My talk is at 3 tomorrow (Wednesday).
>
> Thank you in advance!
> Katie
>
> Sent from my iPhone

From: Ludwig-Monty, Sarah
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Flannery-Keith, Erin
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Swackhammer, J-Troy
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Keating, Jim
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Bennett, Brittany
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

Donna - could you please add a conference line to this meeting? I will be teleworking.

B

From: Hudiburgh, Gary
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Auerbach, Daniel
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Kwok, Rose
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

From: Wendelowski, Karyn
Location: TBD; possibly 3233 WJCE (OW conference room)
Importance: Normal
Subject: Accepted: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 3/29/2017 3:00:00 PM
End Date/Time: Wed 3/29/2017 4:00:00 PM

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/28/2017 2:16:40 PM
Subject: Automatic reply: Responding to CWR-related 10am meeting requests

I will be out of the office until Wednesday, March 29. For immediate assistance, please contact Clay Miller at miller.clay@epa.gov. I will respond when I return to the office.

Thank you!
Rose

To: Downing, Donna[Downing.Donna@epa.gov]
From: Flannery-Keith, Erin
Sent: Tue 3/28/2017 2:16:38 PM
Subject: Automatic reply: Responding to CWR-related 10am meeting requests

I will return to the office on Wednesday, March 29.

To: McGill, Thomas[Mcgill.Thomas@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov];
Downing, Donna[Downing.Donna@epa.gov]
From: McDavit, Michael W.
Sent: Mon 3/27/2017 7:00:13 PM
Subject: RE: state input into WOTUS rulemaking

Hi Tom,

I'll talk to Mindy and see what we can say.

Thanks,

Michael

W. Michael McDavit, Chief

Wetlands Strategies and State Programs Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

From: McGill, Thomas
Sent: Monday, March 27, 2017 1:56 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: state input into WOTUS rulemaking

Mindy/Donna/Mike – Mary Walker (the relatively new R4 Water Division Director) is traveling to the state offices in Tennessee and Kentucky this week. In the event Mary receives questions about how states can provide input into the rulemaking effort for WOTUS, she wanted to know whether there is anything she can share regarding any specific processes or mechanisms that OW will use. If you have anything you can pass along please let me know. Thanks. Tom

From: Downing, Donna
Location: DCRoomWest7201/DC-CCW-OWOW (Note: is different room than usual!)
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 6/14/2017 3:00:00 PM
End Date/Time: Wed 6/14/2017 4:00:00 PM

ROOM WILL BE 7201, “TILLAMOOK CONFERENCE ROOM” IN EPA WEST (unless Rose or Damaris can find a larger and/or more convenient conference room in the meantime)

Telecom info is: Nonresponsive Conference Code/ Ex. 6

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please note that this meeting isn’t an invitation to the preceding leadership meeting ... although we’ll try to take over their room afterwards if it’s available.

From: Downing, Donna
Location: DCRoomWest7201/DC-CCW-OWOW (Note: is different room than usual!)
Importance: High
Subject: Canceled: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 6/14/2017 3:00:00 PM
End Date/Time: Wed 6/14/2017 4:00:00 PM

ROOM WILL BE 7201, “TILLAMOOK CONFERENCE ROOM” IN EPA WEST (unless Rose or Damaris can find a larger and/or more convenient conference room in the meantime)

Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn’t an invitation to the preceding leadership meeting ... although we’ll try to take over their room afterwards if it’s available.

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS-2 interagency staff meeting
Start Date/Time: Tue 6/13/2017 5:00:00 PM
End Date/Time: Tue 6/13/2017 6:00:00 PM

NOTE: CONFIRMING ROOM IS 7129, "Rappahannock" conference room.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call **Nonresponsive Conference Code/ Ex. 6**

Talk to you later!

Donna

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: New Time Proposed: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/13/2017 4:00:00 PM
End Date/Time: Tue 6/13/2017 5:00:00 PM

To: Bennett, Brittany[bennett.brittany@epa.gov]
From: Downing, Donna
Sent: Mon 6/12/2017 9:06:07 PM
Subject: RE: WOTUS Interagency Room Reservation

Hey Brittany – this meeting runs Tuesday (tomorrow) from 1-2, not 12 to 1... Could I propose that as a time??

Donna

-----Original Appointment-----

From: Bennett, Brittany
Sent: Monday, June 12, 2017 2:10 PM
To: Bennett, Brittany; Downing, Donna
Subject: WOTUS Interagency Room Reservation
When: Tuesday, June 13, 2017 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/13/2017 4:00:00 PM
End Date/Time: Tue 6/13/2017 5:00:00 PM

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Downing, Donna
Location: DCRoomWest7343/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: 7343 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/20/2017 5:00:00 PM
End Date/Time: Tue 6/20/2017 6:00:00 PM

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: 7129 WOTUS Interagency Room Reservation
Start Date/Time: Tue 6/27/2017 5:00:00 PM
End Date/Time: Tue 6/27/2017 6:00:00 PM

From: Downing, Donna
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: 7114M WOTUS Interagency Room Reservation
Start Date/Time: Tue 7/18/2017 5:00:00 PM
End Date/Time: Tue 7/18/2017 6:00:00 PM

From: Downing, Donna

Location: Nonresponsive Conference Code/ Ex. 6 and webinar link, 7129 WJC West

Importance: Normal

Subject: Tentative: Staff-to-Staff Call with the Karuk Tribe on WOTUS Rulemaking

Start Date/Time: Mon 6/19/2017 7:00:00 PM

End Date/Time: Mon 6/19/2017 8:00:00 PM

Personal Matters / Ex. 6

for then...) clicking "tentative" so it's on my calendar.

Donna

To: Frazer, Brian[Frazer.Brian@epa.gov]
From: Downing, Donna
Sent: Mon 6/12/2017 4:21:54 PM
Subject: Re: Declined: WOTUS-2 interagency staff meeting

Enjoy!

In your absence, I'll probably resist the urge to delegate the WOTUS-2 project to you and OWM...

Donna

Sent from my iPhone

> On Jun 12, 2017, at 12:20 PM, Frazer, Brian <Frazer.Brian@epa.gov> wrote:

>

> **Personal Matters / Ex. 6**

>

> -----Original Message-----

> From: Downing, Donna

> Sent: Monday, June 12, 2017 12:19 PM

> To: Frazer, Brian <Frazer.Brian@epa.gov>

> Subject: Re: Declined: WOTUS-2 interagency staff meeting

>

> **Personal Matters / Ex. 6**

>

> Donna

>

> Sent from my iPhone

>

>> On Jun 12, 2017, at 9:52 AM, Frazer, Brian <Frazer.Brian@epa.gov> wrote:

>>

>> **Personal Matters / Ex. 6**

>>

>> <meeting.ics>

To: Frazer, Brian[Frazer.Brian@epa.gov]
From: Downing, Donna
Sent: Mon 6/12/2017 4:19:03 PM
Subject: Re: Declined: WOTUS-2 interagency staff meeting

Personal Matters / Ex. 6

Donna

Sent from my iPhone

> On Jun 12, 2017, at 9:52 AM, Frazer, Brian <Frazer.Brian@epa.gov> wrote:

>

> **Personal Matters / Ex. 6**

>

> <meeting.ics>

From: Downing, Donna
Location: DCRoomWest7114M/DC-CCW-OWOW
Importance: Normal
Subject: WOTUS-2 staffing discussion pre-meeting
Start Date/Time: Mon 6/12/2017 3:30:00 PM
End Date/Time: Mon 6/12/2017 4:00:00 PM

Hi Damaris –

Thanks for adding additional communications and consultation/coordination details to the draft staffing plan. I'll be in the office shortly after 11 and so am scheduling a short pre-meeting discussion with the two of us, with Rose be an optional since she'll be newly back in the office and thus her head might not be as full of potential staffing issues as ours are at present.

I'll be sending a third draft staffing plan shortly. Draft three will differ from the second draft in a bit of updated detail outside of the communication sections, as well as will reflect a bit of restructuring of the communications-tribal-federalism-state/local outreach section. I'd like to see

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Anyway, that's my goal and the soon-to-be-sent third draft staffing plan is an attempt to do that. Let's discuss at 11:30 whether that is a good goal, whether the third draft works to help bring such a goal about, and if there's a better approach. Stay tuned!

Hope you had a good weekend. I spent it

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Donna

To: Shamet, Stefania[Shamet.Stefania@epa.gov]

From: Downing, Donna

Sent: Mon 6/12/2017 12:40:43 AM

Subject: RE: Any ETA on Step 1 in Federal Register? Have a case where

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

After signature we'll post a pre-publication version on line and replace it after the FR actually publishes the proposal (usually a lag of a week or so). I'll send a note to the workgroup when I hear the Administrator and the ASA/CW surrogate have signed.

Personal Matters / Ex. 6

Donna

From: Shamet, Stefania

Sent: Sunday, June 11, 2017 7:43 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Subject: Any ETA on Step 1 in Federal Register? Have a case where

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Fri 6/9/2017 2:39:52 PM
Subject: RE: Efforts to review Congress'l poweroint...

Nope.

Is this the Congressional briefing that Greg and Craig are going to do? I recall at the Wednesday 10am somebody saying [REDACTED] **Deliberative Process / Ex. 5** Or, not? It'd be nice if an additional set of ears would listen into what they say...

Donna

From: Christensen, Damaris
Sent: Friday, June 09, 2017 10:38 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Efforts to review Congress'l poweroint...

[REDACTED] we decided to [REDACTED] **Deliberative Process / Ex. 5**
[REDACTED] you were copied on those emails last week I think.

Was there a decision to change that at some point? I didn't hear one.

Damaris

From: Downing, Donna
Sent: Friday, June 09, 2017 10:36 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Efforts to review Congress'l poweroint...

Great, thanks. I was wondering if that might be it, despite plans to Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, June 09, 2017 10:29 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Efforts to review Congress'l poweroint...

I made the changes since I saw there were only two and that text hadn't changed between versions.

The new version is in the same folder if you want to look at it anyway. Stacey or someone renamed it WOTUS part 1.congressional briefings.

Damaris

Sent from my iPhone

On Jun 9, 2017, at 10:25 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Thanks, it worked (although I used powerpoint, not excel...) Another present brought to you by Windows 10.

Just got your email in a float-up screen saying there were two powerpoint versions. I had two comment bubbles only and can move them to the latest ... but where is the latest? For my comments this morning I went to the folder you recommended, under outreach/federal and saw the congressional powerpoint.

Donna

From: Christensen, Damaris
Sent: Thursday, June 08, 2017 7:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Re: Efforts to review Congress'l powerpoint...

You just open it, accept there's a problem, and then open in excel from the drop down menu. This has been a long running issue with all the power points we've put on sharepoint.

Sent from my iPhone

On Jun 8, 2017, at 5:11 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Damaris –

FYI, I tried to open the Congressional powerpoint under outreach/federal, but three times got error messages. It could be my computer, it could be a temporary glitch with Sharepoint, or it could be gremlins. I'll try again tomorrow morning and will let you know when I'm done.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Fri 6/9/2017 2:36:12 PM
Subject: RE: Efforts to review Congress'l poweroint...

Great, thanks. I was wondering if that might be it, despite plans to Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, June 09, 2017 10:29 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Efforts to review Congress'l poweroint...

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Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]
From: Downing, Donna
Sent: Thur 6/8/2017 4:02:29 PM
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

No, it's biweekly and we met last Tuesday.

Donna

Sent from my iPhone

On Jun 8, 2017, at 11:59 AM, Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov> wrote:

Hey Donna, is this meeting on today?

-----Original Appointment-----

From: Downing, Donna

Sent: Tuesday, May 23, 2017 1:45 PM

To: Kwok, Rose; Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Stefania Shamet; Somerville, Eric; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Peter Stokely; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Rose Kwok; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; James Morgan; Moffatt, Brett; Feinmark, Phyllis; Kovac, Steve

Cc: Swackhammer, J-Troy; Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen; Alexander, Laurie; Goodwin, Kara

Subject: FW: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

To: Wesson, Dolores[Wesson.Dolores@epa.gov]
From: Downing, Donna
Sent: Thur 6/8/2017 3:04:11 PM
Subject: Emailing: Clean Water Rule as published in FR.pdf
Clean Water Rule as published in FR.pdf

Hi Delores!

Here's a .pdf of the Clean Water Rule. I just discovered when you go to the Clean Water Rule website it forwards you to the website for the new rulemaking.

Donna

Your message is ready to be sent with the following file or link attachments:

Clean Water Rule as published in FR.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Wed 6/7/2017 12:47:18 PM
Subject: FYI, I've printed 12 copies of the agenda for the 10am WOTUS leadership meeting

Just thought I'd let you know so we didn't all print copies and have an excess...

See you at 10am!

DMD

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: High
Subject: Canceled: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 6/7/2017 3:00:00 PM
End Date/Time: Wed 6/7/2017 4:00:00 PM

SEE EMAIL JUST SENT (6/6 AT 5:12) REGARDING THIS ONE-TIME CANCELLATION.

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US)[John.M.Wilson@usace.army.mil]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Doley, Todd[doley.todd@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Hudiburgh, Gary[Hudiburgh.Gary@epa.gov]; Principe, Vanessa[Principe.Vanessa@epa.gov]; Clark, Becki[Clark.Becki@epa.gov]; Jennings, Kim[Jennings.Kim@epa.gov]
Cc: Peck, Gregory[Peck.Gregory@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Massey, Matt[Massey.Matt@epa.gov]; Guignet, Dennis[Guignet.Dennis@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
From: Downing, Donna
Sent: Tue 6/6/2017 9:12:13 PM
Subject: Cancelling for this week only the 11am staff-level meeting, "Responding to CWR-related 10am meeting requests"

Hi everybody:

This afternoon at our 1pm recurring meeting we had a good discussion and update on the WOTUS-2 project, and are well-positioned for our Wednesday 10am WOTUS-2 leadership meeting. However, we have an important outreach meeting at 11am, overlapping with our ongoing staff-level meeting to respond "to CWR-related 10am meeting requests." We've looked at schedules to see if the meeting could be after the outreach meeting and quickly ran into colliding schedules and meetings. So, in consultation with Mindy, I've decided to cancel the follow-up meeting for this week only. If we have follow-up to the 10am meeting we likely can coordinate via email. If something arises that needs a meeting, we'll work that when it arises.

Expect a cancellation notice shortly.

Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

Hi everybody –

This meeting is to plan staffing for the ongoing and upcoming “waters of the US-2” (WOTUS-2) initiative. During the meeting, we’ll identify who will be lead for specific activities, who will assist, who will serve as a technical resource as needed, how to cover during vacations and other non-WOTUS time demands, and the like. I’ll distribute a draft list of specific activities beforehand.

I’m hoping this time will work ... with peoples’ travel schedules it’s been hard to identify a date and time.

If you know of additional OWOW staff that I should have included on the invitation, please forward to them. Thanks!

Looking forward to the discussion.

Donna

From: Downing, Donna
Location: DCRoomWest7114M/DC-CCW-OWOW (Pacific conference room)
Importance: Normal
Subject: Planning session for WOTUS-2 staffing
Start Date/Time: Mon 6/12/2017 5:00:00 PM
End Date/Time: Mon 6/12/2017 6:00:00 PM

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I’m hoping this time will work ... with peoples’ travel schedules it’s been hard to identify a date and time.

If you know of additional OWOW staff that I should have included on the invitation, please forward to them. Thanks!

Looking forward to the discussion.

Donna

To: Penman, Crystal[Penman.Crystal@epa.gov]
From: Downing, Donna
Sent: Tue 6/6/2017 1:18:55 PM
Subject: RE: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

That sounds good, thanks.

Donna

From: Penman, Crystal
Sent: Tuesday, June 06, 2017 9:18 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

3233 will not be available tomorrow. I can offer 2369b from 10:45am-11:30am only.

From: Downing, Donna
Sent: Tuesday, June 6, 2017 9:10 AM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

Yes, I believe we still plan to have the 10am with Mike and the interagency WOTUS leadership, and to follow that up with a staff-level meeting at 11am in the same room if possible.

I'll check with Mindy and let you know if she's heard of any plans to change.

Thanks for asking!

Donna

From: Penman, Crystal
Sent: Tuesday, June 06, 2017 7:32 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**

Do you still need 3233 from 10:45-11:45am. Last week was the last entry on Mike's calendar. (this is the get together meeting you have after the WOTUS meeting). Please advise.

Subject: WOTUS Call in **Nonresponsive Conference Code/ Ex. 6**
Location: 3233 WJCE

Start: Wed 6/7/2017 10:00 AM
End: Wed 6/7/2017 10:45 AM

Recurrence: Weekly
Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Cheatham, Reggie; [Donald.e.](mailto:Donald.e.jackson@usace.army.mil) Donald.e.jackson@usace.army.mil; Hewitt, Julie; Brown, Byron; Bowman, Liz; Peterson, Carol; Dennis, Allison

Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Macara Lousberg; Joseph Theis; Benjamin Bahk; Pollins, Mark; Sandy Evalenko; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Andrew Hanson; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Connors, Sandra; Jennings, Kim; Cook-Shyovitz, Becky; Cope, Clayton; Goodwin, Kara

To: Shamet, Stefania[Shamet.Stefania@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 9:42:28 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Stef! Good to hear your voice on the regional workgroup call today.

We live in interesting times.

Donna

-----Original Appointment-----

From: Shamet, Stefania
Sent: Thursday, June 01, 2017 5:42 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that this workgroup is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Canceled: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Donna

(202) 566-1367

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 3:02:14 PM
Subject: RE: Support from Eric Somerville

Thought he might have, but didn't want to assume.

DMD

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 9:36 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Support from Eric Somerville

Thanks, he did bcc me.

From: Downing, Donna
Sent: Thursday, June 01, 2017 9:21 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: Support from Eric Somerville

Hi Damaris –

So you know Mike forwarded the email you drafted (didn't see you on the cc's. Perhaps on the bccs?)

Donna

From: McDavit, Michael W.
Sent: Thursday, June 01, 2017 7:47 AM

To: Able, Tony <Able.Tony@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Support from Eric Somerville

Hi Tony,

Thanks for all your support at the national meeting. I thought it was a good meeting for us.

Now to the main reason I'm writing to you. I'd very much like assistance from Eric Somerville for a couple of WOTUS2-related projects. They are interrelated, and would both inform the Response to Comments effort. I'm in need of someone like Eric because **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 I'm erring on the side of detail, but would like to articulate the specific needs below. It might help you and Eric better understand our current thinking.

• First, I would like to have Eric assist Damaris (and Simma Kupchan in OGC, and possibly others) in **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

• Second, I would like to ask Eric to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We are very grateful for the significant effort Eric has already put into the Clean Water Rule, and appreciate your willingness to let him provide further support. Please share this with Eric and then let me know if you and he are okay with this request and the time estimates. In any case, thanks so much for considering it. Crossing my fingers.

All my best,

Michael

W. Michael McDavit, Chief

Program Development and Jurisdiction Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

"Why is the sea king of a hundred streams?

Because it lies below them."

LAO TSU

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 1:31:42 PM
Subject: RE: Hold for Call with Tolowa Dee-ni' Nation on WOTUS

Rose, nice follow-up. Were I the tribe I'd feel you were very helpful and interested in our views.

Donna

From: Kwok, Rose
Sent: Wednesday, May 31, 2017 9:18 PM
To: Briannon.Fraley@tolowa.com; Stevie Lemke <stevie.lemke@Tolowa.com>; Megan Van Pelt <Megan.VanPelt@Tolowa.com>
Cc: Gude, Karen <Gude.Karen@epa.gov>; CWAwotus <CWAwotus@epa.gov>
Subject: RE: Hold for Call with Tolowa Dee-ni' Nation on WOTUS

Dear Briannon, Stevie, and Megan,

Thank you for joining us today to hear more about our efforts to redefine "waters of the United States" and for your interest in this topic. As follow up to our call, I wanted to provide you with a few items.

- Tribal Consultation Summary Report for 2015 Clean Water Rule (attached)
- Link to full report including comments received from Tribes:
<https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20868> (download the Attachment at this link – it's very large)
- Factsheet with the table comparing the pre-2015 definition to the Clean Water rule definition: https://archive.epa.gov/epa/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf
- Link to decision in *Rapanos*: https://www.epa.gov/sites/production/files/2016-04/documents/rapanos_decision_2006.pdf
- Link to the Executive Order: <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

- Pre-2015 definition of waters of the United States: <https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act#Guidance> (scroll down to heading “1986/1988 Regulatory Definition of ‘Waters of the United States’” for the definition at 40 CFR 230.3)

- 2008 *Rapanos* guidance: https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf (for discussion of current implementation of “relatively permanent waters” and “wetlands with a continuous surface connection”).

I’ve also attached the presentation from today, just in case you didn’t see it attached the invitation.

Please let Karen or I know if you have any questions. We look forward to hearing your comments. Consultation comments should be sent to CWAwotus@epa.gov and gude.karen@epa.gov (both copied here).

Thank you,

Rose

Rose Kwok

U.S. Environmental Protection Agency

Oceans, Wetlands, and Communities Division

kwok.rose@epa.gov

202-566-0657

-----Original Appointment-----

From: Kwok, Rose

Sent: Monday, May 15, 2017 2:57 PM

To: Kwok, Rose; Eisenberg, Mindy; Shaw, Hanh; Peak, Tracy; Dean, Heather; Leidy, Robert; Amato, Paul; Wesson, Dolores; Downing, Donna; Gude, Karen; Brush, Jason; Louis, Gail; Briannon.Fraley@tolowa.com; Charles Smith

Cc: Peterson, Carol; Christensen, Damaris; Eastman, Tiffany (AKA: Stone); Nadeau, Tracie; Stevie Lemke; Megan Van Pelt

Subject: Hold for Call with Tolowa Dee-ni’ Nation on WOTUS

When: Wednesday, May 31, 2017 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Nonresponsive Conference Code/ Ex. 6 or 7114M WJC West (Pacific Conference Room)

Tribal consultation conference call with the Tolowa Dee-ni' Nation, located in Northern California and Southern Oregon, on the "waters of the United States" (WOTUS) rulemaking efforts.

Conference line: Nonresponsive Conference Code/ Ex. 6

In DC, I've reserved the Pacific Conference Room (7114-M West)

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 1:29:17 PM
Subject: RE: responding to correspondence from the public about WOTUS

At a meeting yesterday Larry said he'd handle all the controls and approach us if he needs some help. So ...

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I may give into my urge to check with him later today. Not that I'm dying to write controls, you understand!

Donna

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 1:49 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: responding to correspondence from the public about WOTUS

AM I correct in assuming you/Stacey are handling this? Seems like there's discussion at OGC that needs to get to R4...

From: McGill, Thomas
Sent: Wednesday, May 31, 2017 6:16 PM
To: Weinstock, Larry <Weinstock.Larry@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: responding to correspondence from the public about WOTUS

Thanks Larry. Apparently OECA redirected it to Region 4 for a response, as it's now assigned to my group. Do you have any templates that you could share for our consideration?

From: Weinstock, Larry
Sent: Wednesday, May 31, 2017 2:09 PM
To: Downing, Donna <Downing.Donna@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: responding to correspondence from the public about WOTUS

I already saw this email and had it sent to OECA for response. Since it is an enforcement issue.

Larry Weinstock

Acting Associate Director,

Oceans, Wetlands and Communities Division

Office of Water

202-564-9226

From: Downing, Donna
Sent: Wednesday, May 31, 2017 1:16 PM
To: McGill, Thomas <McGill.Thomas@epa.gov>
Cc: Weinstock, Larry <Weinstock.Larry@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: responding to correspondence from the public about WOTUS

Hi Tom:

I'm forwarding your email to Larry Weinstock, who's coordinating OWOW's WOTUS responses and has a variety of templates. Larry, I'd be happy to help if the incoming doesn't fit well into one of the exiting templates.

Donna

From: McGill, Thomas

Sent: Wednesday, May 31, 2017 1:08 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris
<Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>

Subject: responding to correspondence from the public about WOTUS

Attached is a letter to the Administrator regarding WOTUS, which our Region is planning to respond. Are there specific templates that the Agency is using for letters to the public on this matter? Of course we can use our judgment on how to respond, but if there's a template we need to use please let me know. Thanks. Tom

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 1:21:58 PM
Subject: RE: status of WOTUS for the Southeast State Commissioners

Thanks for getting back to Tom, Damaris. Both Mindy and I had given him a bit of a response, but yours is more organized and complete.

Donna

From: Christensen, Damaris
Sent: Thursday, June 01, 2017 2:45 AM
To: McGill, Thomas <Mcgill.Thomas@epa.gov>; Hurl, Kathy <Hurl.Kathy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: status of WOTUS for the Southeast State Commissioners

Thomas,

I'm sorry I couldn't get back to you sooner but was in meetings most of the day. Hopefully you got answers already from Donna or Mindy.

1. There is no more recent desk statement – but it is all still true.
2. The step 1 rule is still at OMB.
3. We don't know exactly when the FR notice will hit the streets, but we are hoping/expecting it will be soon.
4. I'm attaching the latest TPs and the powerpoint we shared at the federalism meeting in April for your info (please don't actually use the powerpoint at this time – but it gives you a sense of the kinds of questions we've been asking).

Essentially, step 1 has been undergoing interagency review, and step 2 is in a pre-proposal

period of consulting with state, local and tribal governments. We are having increasing numbers of meetings and are hoping for lots of good feedback as the consultation periods draw to a close at the end of June.

Damaris

From: McGill, Thomas
Sent: Wednesday, May 31, 2017 8:45 AM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: status of WOTUS for the Southeast State Commissioners

Yes, will do. Mary is planning to include remarks about WOTUS along with other items she'll present in a 25-minute period, so there likely won't be much time for robust input from the states. I'll follow-up with you after the meeting to share what was communicated. Tom

From: Hurlid, Kathy
Sent: Wednesday, May 31, 2017 8:26 AM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: status of WOTUS for the Southeast State Commissioners

Tom,

I'm helping out with the federalism aspect of WOTU-2. Damaris or Donna will answer your questions, but I'm hoping you can ask Mary (or get this yourself) to send us the states/state agencies with whom she discussed WOTUS and any input she may have received from them. We need to keep track of this for the rule.

Thanks,

Kathy

From: Eisenberg, Mindy
Sent: Tuesday, May 30, 2017 5:34 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: status of WOTUS for the Southeast State Commissioners
Importance: High

Mindy Eisenberg

Acting Director, Oceans, Wetlands and Communities Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: McGill, Thomas
Sent: Tuesday, May 30, 2017 5:33 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>
Subject: status of WOTUS for the Southeast State Commissioners
Importance: High

Our Regional senior management will be meeting with the State Commissioners on Thursday, June 1, and today Mary Walker (our Division Director) asked me about the latest information that we are at liberty to share regarding the status of the waters of the U.S. rulemaking effort. I have a few specific questions and would appreciate any help you could provide by 3:00 tomorrow (May 31).

- Is there a more recent desk-statement than the 5/3/17 document?
- Can we tell the states that the “step one” rule is still with OMB?
- Can we share when we think the FR notice will hit the streets?
- Is there any other information that you think would be helpful for Mary to share?

Thanks!

Tom

From: Eisenberg, Mindy

Sent: Wednesday, May 3, 2017 9:45 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen,

Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>; EPA Wetlands Managers <EPA_Wetlands_Managers@epa.gov>; Allnutt, David <Allnutt.David@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Thomas, Latosha <Thomas.Latosha@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>
Subject: WOTUS desk statement

Hi All,

As promised, attached is the OPA approved desk statement for submitting the step 1 rule to OMB. We will be working on additional talking points and FAQs to share with you soon. Also, we are working on a new web page which we plan to launch prior to the proposed rule going to the federal register. This will be a resource for everyone to direct basic questions. Stay tuned!

Thanks,

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 12:00 PM

To: Downing, Donna; Wesson, Dolores; Jensen, Stacey M CIV USARMY HQDA (US); Sachs, Erica; Williams, Ann; Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Somerville, Eric; Able, Tony; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Ludwig-Monty, Sarah; Balasa, Kate; Palomaki, Ashley; Cantilli, Robert; Martinez, Maria; Cindy Barger; Morgan, James

Cc: Peterson, Carol; Speir, Jeffrey; Connors, Sandra; Horchem, Brad; Gude, Karen

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

When: Thursday, May 04, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that this workgroup is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday's meeting!

Donna

(202) 566-1367

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Thur 6/1/2017 1:20:58 PM
Subject: FW: Support from Eric Somerville

Hi Damaris –

So you know Mike forwarded the email you drafted (didn't see you on the cc's. Perhaps on the bccs?)

Donna

From: McDavit, Michael W.
Sent: Thursday, June 01, 2017 7:47 AM
To: Able, Tony <Able.Tony@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Support from Eric Somerville

Hi Tony,

Thanks for all your support at the national meeting. I thought it was a good meeting for us.

Now to the main reason I'm writing to you. I'd very much like assistance from Eric Somerville for a couple of WOTUS2-related projects. They are interrelated, and would both inform the Response to Comments effort. I'm in need of someone like Eric because Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 I'm erring on the side of detail, but would like to articulate the specific needs below. It might help you and Eric better understand our current thinking.

• First, Deliberative Process / Ex. 5
Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

•□□□□□□ Second, I would like to ask Eric to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We are very grateful for the significant effort Eric has already put into the Clean Water Rule, and appreciate your willingness to let him provide further support. Please share this with Eric and then let me know if you and he are okay with this request and the time estimates. In any case, thanks so much for considering it. Crossing my fingers.

All my best,

Michael

W. Michael McDavit, Chief

Program Development and Jurisdiction Branch

Office of Water/USEPA (MC 4502T)

1200 Penn. Ave, NW (Room 7303 West Bldg)

Washington, DC 20460

202-566-2465

"Why is the sea king of a hundred streams?

Because it lies below them."

LAO TSU

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that this workgroup is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that this workgroup is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: McGill, Thomas[McGill.Thomas@epa.gov]
Cc: Weinstock, Larry[Weinstock.Larry@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kaiser, Russell[Kaiser.Russell@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Wed 5/31/2017 5:16:25 PM
Subject: FW: responding to correspondence from the public about WOTUS
[17-000-8994.pdf](#)

Hi Tom:

I'm forwarding your email to Larry Weinstock, who's coordinating OWOW's WOTUS responses and has a variety of templates. Larry, I'd be happy to help if the incoming doesn't fit well into one of the exiting templates.

Donna

From: McGill, Thomas
Sent: Wednesday, May 31, 2017 1:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>
Subject: responding to correspondence from the public about WOTUS

Attached is a letter to the Administrator regarding WOTUS, which our Region is planning to respond. Are there specific templates that the Agency is using for letters to the public on this matter? Of course we can use our judgment on how to respond, but if there's a template we need to use please let me know. Thanks. Tom

To: Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Tue 5/30/2017 10:10:42 PM
Subject: WOTUS package stuff for initiating OMB review
OMB Review Memo Transmittal AAA To OP Step 1 WOTUS.docx
OMB Review Memo Transmittal OWOW to AAA Step 1 WOTUS.docx
Signed OWOW to AAA transmittal.pdf

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: Mindy's office
Importance: Normal
Subject: Accepted: WOTUS 2.0 Planning with Mindy
Start Date/Time: Wed 5/31/2017 1:00:00 PM
End Date/Time: Wed 5/31/2017 1:30:00 PM

To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 5/30/2017 6:42:39 PM
Subject: RE: I'm on the line

I thought Jennifer was asking that we move the Corps-EPA biweekly check-in that's usually on Mondays (but rescheduled to today because of Memorial Day), not the WOTUS-2 interagency staff meeting. I did move the former to the Thursday time she suggested.

Donna

-----Original Message-----

From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Tuesday, May 30, 2017 1:04 PM
To: Cindy Barger <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: I'm on the line

Jennifer is on leave this afternoon and requested we move this meeting to Thursday.

Stacey M. Jensen
HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314
(202) 761-5856

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Tuesday, May 30, 2017 1:03 PM
To: Mindy Eisenberg <Eisenberg.Mindy@epa.gov>; Rose Kwok <Kwok.Rose@epa.gov>; Damaris Christensen <Christensen.Damaris@epa.gov>; Donna Downing <Downing.Donna@epa.gov>
Cc: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Subject: I'm on the line

I'm on the standard call in number for staff meeting. If the number changed let me know. ☐ thanks.
Cindy

Sent from my iPhone

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 5/30/2017 4:15:38 PM
Subject: For quick review -- agenda WOTUS2 leadership meeting
Agenda -- WOTUS 31 May 2017.docx

Hi Mindy –

This reflects input from Rose and Damaris, and so would be more time-effective for you to review than the one I circulated earlier.

Thoughts and suggestions?

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 5/30/2017 3:07:59 PM
Subject: For review: draft agenda for Wednesday 10am WOTUS-2 leadership meeting
Agenda -- WOTUS 31 May 2017.docx

Hi Mindy, Rose, and Damaris:

Attached is a draft agenda for tomorrow's 10am WOTUS-2 leadership meeting. The agenda likely needs your input to ensure hot issues that have percolated up while I've been gone are appropriately reflected. I'd like to distribute this to the interagency staff group prior to our 1pm meeting, so any thoughts you might have would be particularly helpful by 12:00. Thanks!

Donna

PS – FYI, installing Windows 10 took 2 ½ hours. Just finished.

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna

Location: Nonresponsive Conference Code/ Ex. 6 or 7301 WJC West (Potomac Conference Room)

Importance: Normal

Subject: Accepted: Hold for Call with Tolowa Dee-ni' Nation on WOTUS

Start Date/Time: Wed 5/31/2017 4:00:00 PM

End Date/Time: Wed 5/31/2017 5:00:00 PM

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: HOLD for Region 6 RTOC WOTUS Presentation
Start Date/Time: Tue 6/6/2017 3:30:00 PM
End Date/Time: Tue 6/6/2017 4:00:00 PM

From: Downing, Donna
Location: Webinar
Importance: Normal
Subject: Accepted: TENTATIVE: Region 4 RTOC on WOTUS
Start Date/Time: Wed 6/7/2017 3:00:00 PM
End Date/Time: Wed 6/7/2017 4:00:00 PM

From: Downing, Donna

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Accepted: WOTUS options discussion
Start Date/Time: Wed 5/31/2017 7:00:00 PM
End Date/Time: Wed 5/31/2017 8:00:00 PM

From: Downing, Donna
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: High
Subject: Canceled: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/24/2017 3:00:00 PM
End Date/Time: Wed 5/24/2017 4:00:00 PM

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Tue 5/23/2017 4:49:31 PM
Subject: RE: Responding to CWR-related 10am meeting requests

Hey Rose –

This refers to the post-leadership Wednesday meeting at 11am-ish, right? Wanted to check before I cancelled this week's.

Donna

From: Kwok, Rose
Sent: Monday, May 22, 2017 2:56 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Moyer, Jennifer A CIV USARMY CEHQ (US) <Jennifer.A.Moyer@usace.army.mil>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US <John.M.Wilson@usace.army.mil>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Swackhammer, J-Troy <Swackhammer.J-Troy@epa.gov>; Principe, Vanessa <Principe.Vanessa@epa.gov>; Clark, Becki <Clark.Beki@epa.gov>; Jennings, Kim <Jennings.Kim@epa.gov>; David.F.Dale@usace.army.mil; Keating, Jim <Keating.Jim@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Doley, Todd <Doley.Todd@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Massey, Matt <Massey.Matt@epa.gov>; Guignet, Dennis <Guignet.Dennis@epa.gov>
Subject: RE: Responding to CWR-related 10am meeting requests

Hi Folks,

We are cancelling this Wednesday's meeting. I'll send out a reminder on Wednesday, but in the meantime, please delete this week's meeting from your calendar. Again, I'll try to have Donna cancel it.

Thaks!

-----Original Appointment-----

From: Downing, Donna

Sent: Friday, April 07, 2017 12:36 PM

To: Downing, Donna; Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Wendelowski, Karyn; Flannery-Keith, Erin; Swackhammer, J-Troy; Principe, Vanessa; Clark, Becki; Jennings, Kim; David.F.Dale@usace.army.mil; Keating, Jim; Frazer, Brian; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Ludwig-Monty, Sarah; Neugeboren, Steven

Cc: Peck, Gregory; Wesson, Dolores; Massey, Matt; Guignet, Dennis

Subject: Responding to CWR-related 10am meeting requests

When: Wednesday, May 24, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Telecom info is: Nonresponsive Conference Code/ Ex. 6

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

(note is different # for this week's meeting only!)

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/23/2017 5:00:00 PM

End Date/Time: Tue 5/23/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6 note this is a different number for this week's meeting only

Talk to you later!

Donna

To: Feinmark, Phyllis[Feinmark.Phyllis@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 8:47:02 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Excellent, Phyllis! Glad you can join us.

Donna

-----Original Appointment-----

From: Feinmark, Phyllis
Sent: Tuesday, May 09, 2017 4:42 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Occurs every 2 week(s) on Thursday effective 4/20/2017 until 8/24/2017 from 1:00 PM to 2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 7:02:41 PM
Subject: RE: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Yes, the draft agenda reflects the new room. Thanks for keeping an eye out for us!

Donna

From: Penman, Crystal
Sent: Tuesday, May 09, 2017 2:59 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Donna, did you get my email that your group meeting after WOTUS has been moved to 3106C. Not 3233.

From: Downing, Donna
Sent: Tuesday, May 9, 2017 2:43 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Hi Crystal and Ann—

Attached please find a copy of the agenda for Wednesday's 10am WOTUS leadership meeting. The agenda reflects input from Wetlands Division management.

If you have any questions or suggestions, please give a call to either Mindy (566-1290) or me

(566-1367).

Ann, if the agenda looks OK could you coordinate with Crystal to have it added to the meeting invitation? Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Campbell, Ann[Campbell.Ann@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 7:00:22 PM
Subject: RE: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

I'll leave that one up to Mindy and Damaris to decide. What do you two think?

Donna

From: Campbell, Ann
Sent: Tuesday, May 09, 2017 2:56 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Thanks Donna. This looks good. My only question is, I know **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, May 09, 2017 2:43 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting

Hi Crystal and Ann—

Attached please find a copy of the agenda for Wednesday's 10am WOTUS leadership meeting. The agenda reflects input from Wetlands Division management.

If you have any questions or suggestions, please give a call to either Mindy (566-1290) or me (566-1367).

Ann, if the agenda looks OK could you coordinate with Crystal to have it added to the meeting invitation? Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 6:59:26 PM
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

Deliberative Process / Ex. 5

Donna

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: FW: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

From: Cathy Milbourn [<mailto:milbourn.cathy@epa.gov>]
Sent: Tuesday, May 09, 2017 11:02 AM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Subject: EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

“EPA is restoring states’ important role in the regulation of water” – Administrator Pruitt

WASHINGTON – U.S. Environmental Protection Agency and the U.S. Army sent a letter to governors today soliciting input from states on a new definition of protected waters that is in-line with a Supreme Court Justice Antonin Scalia’s opinion in the 2006 *Rapanos v. United States* case. Scalia’s definition explains that federal oversight should extend to “relatively permanent” waters and wetlands with a “continuous surface connection” to large rivers and streams.

“EPA is restoring states’ important role in the regulation of water,” **said EPA Administrator Scott Pruitt**. “Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.”

"The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public," **said Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works.**

The Clean Water Act asserts federal control over “traditionally navigable waters” without providing clarity or details about the law’s scope. President Donald Trump signed an executive order on February 28, 2017 to direct federal agencies to roll back and replace the Obama Administration’s Clean Water Rule – also known as the “Waters of the U.S.” or WOTUS – to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution.

To meet the objectives of the executive order, federal agencies are following a two-step process that will provide as much certainty as possible, as quickly as possible, to the regulated community and the public during the development of the replacement rule.

The first step is to revise the Code of Federal Regulations to re-codify the definition of “Waters of the United States” which currently governs administration of the Clean Water Act, in light of a decision by the U.S. Court of Appeals for the Sixth Circuit staying a definition of “Waters of the United States” promulgated by the agencies in 2015. This action will simply make the text of the Code of Federal Regulations reflect the definition currently in effect under the Sixth Circuit stay. This action, when final, will not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance documents, and longstanding practice.

The second step will be a public notice-and-comment rulemaking involving a substantive reevaluation and revision of the definition of “Waters of the U.S.” in accordance with the executive order. The letter sent to governors today is seeking input on the second step of the process.

R079

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking [here](#).
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 6:44:14 PM
Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

We are **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:37 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I was in the process of writing an email very similar to Rose's.

I'm copying Becky Cook-Shyovitz in OCIR, because she could weigh in on when the letters were actually mailed and the specific addressees. Becky, see the media request below –

Damaris

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:35 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Hi Antonio,

1. It's my understanding that **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

2. **Deliberative Process / Ex. 5**
Mindy or Damaris, do you know?

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:26 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?
2. Were all letters sent today, or on May 8, the date on the Branstad letter?

From: Fuld, John
Sent: Tuesday, May 09, 2017 2:16 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm



Office of Water

Media Inquiry

John W. Fuld, Ph.D.

U.S. Media Relations Mgr.-Water

fuld.john@epa.gov

DATE: May 9, 2017

OUTLET: CQ Roll Call

REPORTER: Jackie Toth

TOPIC: RE: WOTUS News Release

DEADLINE: 3 pm

OW PROGRAM OFFICE: OWOW

PERTINENT INFORMATION:

Two questions on the WOTUS state input news release.

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?
2. Were all letters sent today, or on May 8, the date on the Branstad letter?

For Context – Internal Only *{to be included in addendum}*

BACKGROUNDER: *(background on the issue. What is it? The objective? Is it bipartisan? Is it publicly avail? Are we making news with discussing this for the first time? Have we discussed it publicly before? Where? Listserv? Meeting? Webinar? Press Release? Speech?)*

INFORMATION PUBLICLY AVAILABLE: *(LIST SOURCE WITH EACH ANSWER)*

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water

Environmental Protection Agency

1200 Constitution Ave

Washington DC 20460

Office: 202-564-8847

Cell: Personal Phone / Ex. 6

Fuld.john@epa.gov

To: Ann Campbell[Campbell.Ann@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 6:43:27 PM
Subject: For review & posting -- Agenda for Wednesday 10am WOTUS leadership meeting
Agenda -- WOTUS 10 May 2017 (003).docx

Hi Crystal and Ann--

Attached please find a copy of the agenda for Wednesday's 10am WOTUS leadership meeting. The agenda reflects input from Wetlands Division management.

If you have any questions or suggestions, please give a call to either Mindy (566-1290) or me (566-1367).

Ann, if the agenda looks OK could you coordinate with Crystal to have it added to the meeting invitation? Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: DCRoomWest7201/DC-CCW-OWOW
Importance: Normal
Subject: Declined: WOTUS Communications and Outreach
Start Date/Time: Fri 5/19/2017 6:00:00 PM
End Date/Time: Fri 5/19/2017 7:00:00 PM

From: Downing, Donna
Location: DCRoomWest7201/DC-CCW-OWOW
Importance: Normal
Subject: Declined: WOTUS Communications and Outreach
Start Date/Time: Mon 5/15/2017 5:00:00 PM
End Date/Time: Mon 5/15/2017 6:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 4:28:26 PM
Subject: RE: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]

Just sent a draft agenda for your consideration and editing...

Donna

From: Eisenberg, Mindy
Sent: Tuesday, May 09, 2017 12:27 PM
To: Penman, Crystal <Penman.Crystal@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]

Will send an agenda later. Thanks

Sent from my iPhone

On May 9, 2017, at 12:18 PM, Penman, Crystal <Penman.Crystal@epa.gov> wrote:

Any materials for this meeting? Please advise.

Subject: WOTUS Call in [Nonresponsive Conference Code/ Ex. 6]

Location: DCRoomEast2369B/DC-ICC-OW-IO

Start: Wed 5/10/2017 10:00 AM

End: Wed 5/10/2017 10:45 AM

Show Time As: Tentative

Recurrence: Weekly

Recurrence Pattern: every Wednesday from 10:00 AM to 10:45 AM

Meeting Status: Meeting organizer

Organizer: Shapiro, Mike

Required Attendees: Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; Frithsen, Jeff; Nickerson, William; Frazer, Brian; Dravis, Samantha; Keating, Jim; David.F.Dale@usace.army.mil; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Hewitt, Julie; Bowman, Liz; McDavit, Michael W.; Stokely, Peter; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah; Donald.e.jackson@usace.army.mil; Brown, Byron

Optional Attendees: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Pollins, Mark; Washington, Valerie; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Theis, Joseph; Bahk, Benjamin; Evalenko, Sandy; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US); McGartland, Al; Penman, Crystal; Clark, Becki; Indermark, Michele; Hanson, Andrew; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW; Connors, Sandra

Resources: DCRoomEast2369B/DC-ICC-OW-IO

To: Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Tue 5/9/2017 4:16:51 PM
Subject: FW: agenda for Wed. 10 WOTUS meeting
Agenda -- WOTUS 03 May 2017.docx

From: Eisenberg, Mindy
Sent: Tuesday, May 02, 2017 3:56 PM
To: Penman, Crystal <Penman.Crystal@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: agenda for Wed. 10 WOTUS meeting

Thanks

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Downing, Donna
Location: 3106-C WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 5/10/2017 3:00:00 PM
End Date/Time: Wed 5/10/2017 4:00:00 PM

NEW ROOM -- ROOM WILL BE 3233 3106-C WJCE (~~same room as the 10am leadership meeting~~), unless I've sent a note otherwise for those weeks it's not available.

-

Telecom info is: Nonresponsive Conference Code/ Ex. 6

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 7:08:35 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Thanks, Carrie. We're all set. The folks processing the FS here hadn't shared the sharepoint link with me.

Donna

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:21 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

That's funny. It came in as a SharePoint document. In any case, my edits are in the second attachment. ☺

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose
<Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: For review -- Requested FY18 budget fact sheet on WOTUS

Hi Mindy and Larry:

Attached please find a draft FY18 budget fact sheet on the ongoing WOTUS rulemaking effort. The fact sheet has not been reviewed by OGC, although it is constructed from a variety of documents (including the draft rule preamble) that OGC helped draft.

With this email, I am cc'ing OGC's Carrie Wehling for her input. Carrie, could you please click "reply to all" with any suggested edits or other input?

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 6:47:15 PM
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS
Fact Sheet for FY18 Budget -- WOTUS v1.cw.docx



Fact Sheet for FY18 Budget -- WOTUS v1.docx

Fyi...

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:21 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: For review -- Requested FY18 budget fact sheet on WOTUS

That's funny. It came in as a SharePoint document. In any case, my edits are in the second attachment. ☺

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna

Sent: Thursday, May 04, 2017 7:34 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>

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Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 6:14:16 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Hmmm. I didn't think I'd put it up on Sharepoint, since Mindy and Larry asked me to send the FS directly to them... Where?

Donna

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:11 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

I just saved it into the sharepoint document. Did that not work?

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Friday, May 05, 2017 2:08 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Thanks, Carrie. Where did you upload your changes? I want to make sure to go to the right version. Thanks!

Donna

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Uploaded my fairly limited changes. Thanks.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose

<Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>

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Donna

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downing.donna@epa.gov

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Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 6:08:04 PM
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Thanks, Carrie. Where did you upload your changes? I want to make sure to go to the right version. Thanks!

Donna

From: Wehling, Carrie
Sent: Friday, May 05, 2017 2:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry <Weinstock.Larry@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: For review -- Requested FY18 budget fact sheet on WOTUS

Uploaded my fairly limited changes. Thanks.

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Downing, Donna
Sent: Thursday, May 04, 2017 7:34 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Weinstock, Larry
<Weinstock.Larry@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose
<Kwok.Rose@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
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1200 Pennsylvania Avenue, NW

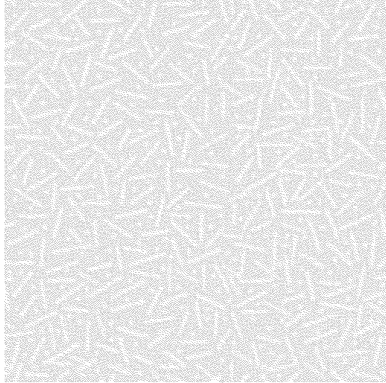
Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Weinstock, Larry[Weinstock.Larry@epa.gov]
From: Downing, Donna
Sent: Fri 5/5/2017 4:29:00 PM
Subject: FW: talking points for Benita
Draft Basic Talking Points updated by DMD.docx



From: Downing, Donna
Sent: Wednesday, May 03, 2017 4:43 PM
To: Johnson, Terri <Johnson.Terri@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: talking points for Benita

Hi Terri:

Attached are updated TPs, reflecting that we've initiated tribal consultation as well as OMB review on the Step 1 draft rule package.

Please let me know if you have any questions or suggestions. Thanks!

Donna

From: Johnson, Terri
Sent: Tuesday, May 02, 2017 9:27 AM
To: Downing, Donna <Downing.Donna@epa.gov>

Subject: FW: talking points for Benita

Donna, I provided the TPs above to Benita last week and told her I would get her any changes you recommend later this week. She is speaking Monday at an Urban Waters meeting in Grand Rapids associated with River Rally.

I think she wants to let John talk about the rule changes and may have some ideas about what should be said but if you think there are any changes to the attached TPs that I should forward to them please let me know before COB Thru.

Terri

From: Downing, Donna
Sent: Thursday, April 13, 2017 5:53 PM
To: Johnson, Terri <Johnson.Terri@epa.gov>
Subject: RE: talking points for Benita

Hi Terri:

Yeah, we're pretty busy but I did remember your request. I hadn't sent any TPs because the

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

With that warning, attached please find the current set of talking points. Let's touch base closer to Rally time to make sure the TPs reflect the then-latest public position.

Thanks!

Donna

From: Johnson, Terri
Sent: Thursday, April 13, 2017 4:23 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: talking points for Benita

I know you must be crazy busy but if you have a chance to forward the talking points you mentioned for the CWA rule it would help me as I develop talking points for Benita and John

I need to get the first draft off to Surabhi Shah for review then they go to Benita for the briefing.

From: Johnson, Terri
Sent: Wednesday, April 05, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: talking points for Benita

Rally is May 8th – 11th and she will be talking to NGOs, our regions and other Feds.

Thanks Donna

Terri Johnson

EPA- Office of Water

Urban Waters Program

202-564-8296

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 11:33:35 PM
Subject: For review -- Requested FY18 budget fact sheet on WOTUS



[Fact Sheet for FY18 Budget -- WOTUS v1.docx](#)

Hi Mindy and Larry:

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With this email, I am cc'ing OGC's Carrie Wehling for her input. Carrie, could you please click "reply to all" with any suggested edits or other input?

Thanks!

Donna

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Somerville, Eric[Somerville.Eric@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 9:38:10 PM
Subject: RE: USGS hydrological defintions

Thanks, Eric!

Donna

From: Somerville, Eric
Sent: Thursday, May 04, 2017 4:01 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: USGS hydrological defintions

In case this is ultimately useful in some way:

Deliberative Process / Ex. 5

Eric Somerville

U.S. EPA Region 4 | Ocean, Wetlands & Streams Protection Branch

c/o SESD (F120-6) | 980 College Station Road | Athens, GA 30605-2720

tel 706.355.8514 | somerville.eric@epa.gov

From: Downing, Donna
Sent: Thursday, May 04, 2017 1:24 PM
To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Sachs,

Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Cantilli, Robert <Cantilli.Robert@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; Morgan, James <Morgan.James@epa.gov>

Cc: Peterson, Carol <Peterson.Carol@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Moffatt, Brett <Moffatt.Brett@epa.gov>

Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

- Quick updates on Step 1, federalism and tribal outreach (10 minutes)

- Brainstorming discussion on **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Nonresponsive Internal URL/ Ex. 6

The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: WOTUS website
Start Date/Time: Tue 5/9/2017 3:00:00 PM
End Date/Time: Tue 5/9/2017 3:45:00 PM

To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[williams.ann@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Stefania Shamet[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livinston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Peter Stokely[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Barger, Cindy S CIV USARMY HQDA ASA CW (US)[cindy.s.barger.civ@mail.mil]; James Morgan[Morgan.James@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 6:52:56 PM
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi everybody –

The invitation has two locations: 7301 and 7129 EPA West. We'll be in 7129!

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

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Washington, DC 20460

Delivery Address:

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To: Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[williams.ann@epa.gov]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Stefania Shamet[Shamet.Stefania@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingson.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Peter Stokely[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; Cantilli, Robert[Cantilli.Robert@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]; Barger, Cindy S CIV USARMY HQDA ASA CW (US)[cindy.s.barger.civ@mail.mil]; James Morgan[Morgan.James@epa.gov]
Cc: Peterson, Carol[Peterson.Carol@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Horchem, Brad[horchem.brad@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Moffatt, Brett[Moffatt.Brett@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 5:24:25 PM
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting

Hi Workgroupies!

This email is a reminder of the recurring WOTUS Regional/HQ staff workgroup meeting. The agenda for today includes:

- Quick updates on Step 1, federalism and tribal outreach (10 minutes)

- Brainstorming discussion on **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

The “read only” version can be found here:

Nonresponsive Internal URL/ Ex. 6

The version of the same document open for your thoughts and general editing is here:

Nonresponsive Internal URL/ Ex. 6

- Timing of our meeting in two weeks

Talk to you this afternoon at 3pm EDT. Telecom and room location are in the invitation.

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

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Deliberative Process / Ex. 5

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Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/18/2017 5:00:00 PM
End Date/Time: Thur 5/18/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 4:23:48 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Remind me to make this an agenda item on this afternoon's workgroup call, and we can decide whether to move forward or back. BTW, I'm going to be out that day Personal Matters / Ex. 6 so might be asking you to lead the call. Let me know if you'd prefer not and I'll point my beady eyes elsewhere.

Donna

-----Original Appointment-----

From: Kwok, Rose
Sent: Thursday, May 04, 2017 11:47 AM
To: Downing, Donna
Subject: New Time Proposed: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, May 18, 2017 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7301/DC-CCW-OWOW

Donna - this meeting overlaps with the Tribal Webinar (from 1:30-3:30 on May 18). Can you please move the time either up or back?

Thanks!

To: Kovatch, Charles[Kovatch.Charles@epa.gov]
From: Downing, Donna
Sent: Thur 5/4/2017 2:51:14 PM
Subject: RE: Monthly Wetlands Regional Managers call

Thanks!

Donna

From: Kovatch, Charles
Sent: Wednesday, May 03, 2017 6:49 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Monthly Wetlands Regional Managers call

Donna

Kudos to you and others on the team who sent the WOTUS Step 1 version to OMB!!

Charles

From: Downing, Donna
Sent: Wednesday, May 3, 2017 4:34 PM
To: Able, Tony <Able.Tony@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Derby, Jennifer <Derby.Jennifer@epa.gov>; Hamilton, Karen <Hamilton.Karen@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; LeClair, Jacqueline <Leclair.Jackie@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Martinsen, Jessica <Martinsen.Jessica@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Montella, Daniel <Montella.Daniel@epa.gov>; Szerlog, Michael <Szerlog.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kovatch, Charles <Kovatch.Charles@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>
Cc: Weaver, Kerryann <weaver.kerryann@epa.gov>; Shaw, Hanh <Shaw.Hanh@epa.gov>
Subject: Monthly Wetlands Regional Managers call

Hi Regional managers:

Mindy and I talked, and concluded that the primary update we have for the Regional Branch Chiefs Update Meeting is that the Step 1 WOTUS rule went to OMB review last Friday and has been logged in on OMB's public website. Given the limited agenda, we think we'll cancel tomorrow's meeting.

Please note that the WOTUS rule workgroup will be meeting later tomorrow afternoon. Several of you are workgroup members, but we encourage those who assigned staff to participate on your behalf to check with your staff for an afternoon update. We anticipate exploring with the rule workgroup

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

So Expect to see a cancellation notice for tomorrow's BC update meeting shortly.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Wed 5/3/2017 7:29:16 PM
Subject: RE: Final WOTUS ppt for R9 RTOC ?

Great, thanks Rose!

How were the last chunks of the Snowbird conference? Hope you enjoyed them!

Donna

From: Kwok, Rose
Sent: Wednesday, May 03, 2017 3:27 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Final WOTUS ppt for R9 RTOC ?

I just spoke to Paul. Jason was able to get in no problem, and Paul and I will test things out 15 minute prior to the start of the webinar tomorrow. So I think we are good on that front! Thanks!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose
Sent: Wednesday, May 3, 2017 1:31:18 PM
To: Christensen, Damaris; Brush, Jason
Cc: Downing, Donna
Subject: Re: Final WOTUS ppt for R9 RTOC ?

I don't think my personal computer has the font that the PPT is in - can someone check this to make sure the slides look ok? Jason - I've updated the title slide and the next steps slide to make it up-to-date. Please let the tribes know that the content in this PPT is the same as the one from April and will be the same for the webinar in May. Thanks!!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Christensen, Damaris
Sent: Wednesday, May 3, 2017 1:07:38 PM
To: Kwok, Rose; Brush, Jason
Cc: Downing, Donna
Subject: RE: Final WOTUS ppt for R9 RTOC ?

Ok will leave to you, thanks.

And I happened to be on the phone with Donna so can confirm we both are standing down. ☺

All, I know Rose is elsewhere working through some connection issues with Paul Amato. Do we need to try and schedule a meeting to do a run-through or talk through the process this afternoon or tomorrow morning with everyone from Region 9?

If so, Rose, give me an approx.. time and I can take care of setting the meeting up if you'd like. If I don't hear from you I will assume you have this under control and people from R9 are comfortable.

Damaris

From: Kwok, Rose
Sent: Wednesday, May 03, 2017 1:04 PM
To: Brush, Jason <Brush.Jason@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Final WOTUS ppt for R9 RTOC ?

Jason - this looks like an older version. I'll send you the right version momentarily. D&D - I need to make a correction from the version that is currently on SP

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Brush, Jason
Sent: Wednesday, May 3, 2017 12:47:34 PM
To: Christensen, Damaris; Kwok, Rose
Cc: Downing, Donna
Subject: Final WOTUS ppt for R9 RTOC ?

Hi guys – Can you make sure I have the final, please? Cheers - JB

Jason A. Brush
Acting Assistant Director, Water Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (WTR-2)

San Francisco, CA 94105

desk: 415.972.3483

From: Louis, Gail

Sent: Wednesday, May 03, 2017 9:43 AM

To: Brush, Jason <Brush.Jason@epa.gov>

Cc: Amato, Paul <Amato.Paul@epa.gov>

Subject: FW: WOTUS Information Session at May R9 RTOC Meeting

This is the latest version I saw. We need to correct the typo

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Gail Louis, Manager

Tribal Water Section

US EPA Region 9, Water Division

75 Hawthorne Street (WTR-3-4)

San Francisco, CA 94105

Phone: (415) 972-3467

Fax: (415) 947-3537

Email: [louis.gail@epa.gov](mailto:louis.gail@epa.gov)

~~~~~>~~~~~>~~~~~>~~~~~>

From: Christensen, Damaris

Sent: Monday, April 24, 2017 2:17 PM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

From: Christensen, Damaris
Sent: Monday, April 24, 2017 11:22 AM
To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>
Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

From: Christensen, Damaris
Sent: Saturday, April 22, 2017 10:56 PM
To: Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail
Cc: Gude, Karen; Kwok, Rose; Wesson, Dolores
Subject: WOTUS Information Session at May R9 RTOC Meeting
When: Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW also Nonresponsive Conference Code/ Ex. 6

Hi all,

Call-in: **Nonresponsive Conference Code/ Ex. 6**

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is **Personal Matters / Ex. 6** till Wednesday, but then I'm out till the end of the week, so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and

coordination on a forthcoming proposal to rescind and then revise the definition of “waters of the United States.” (Clean Water Rule: Definition of “Waters of the United States”; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I’m including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I’m cc’ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

*On February 28, the President issued an Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The EO states that it is in the national interest to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term “navigable waters,” in a manner consistent with the Scalia opinion in *Rapanos v. U.S.**

*The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals’ stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia’s *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.*

OW plans to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you,

Karen Gude

Tribal Program Coordinator (detail)

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Importance: Normal
Subject: Accepted: HOLD for ACWA WOTUS discussion
Start Date/Time: Fri 5/5/2017 6:00:00 PM
End Date/Time: Fri 5/5/2017 8:00:00 PM

I have a meeting conflict at 3:15 but could attend for the first hour-plus.

Donna

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Fri 4/28/2017 6:55:23 PM
Subject: RE: FYI

Sandy says the transmission to OP is all electronic, so we're off the hook (phew!)

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Friday, April 28, 2017 2:51 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: FYI

We may be asked to hand carry it to OP from OW, so if you or someone can do it that would be awesome!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Friday, April 28, 2017 2:40 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: FYI

Thanks for the cc, Mindy. Also note that while I shared it within EPA I recall you wanted to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Hardcopy is with Sandy.

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Friday, April 28, 2017 2:39 PM
To: Nickerson, William <Nickerson.William@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: FYI

You will shortly be receiving the Wotus package from ow. Sarah G asked me to send it to her and Samantha so they could go talk with the administrator who wants it uploaded today. Suggest you wait to hear from Samantha or me when we have OK. Will there be someone who can send it to OMB today?
Thanks

Sent from my iPhone

To: Evalenko, Sandy[Evalenko.Sandy@epa.gov]
Cc: Jones-Coleman, Diane[Jones-Coleman.Diane@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Fields, Wanda[Fields.Wanda@epa.gov]
From: Downing, Donna
Sent: Fri 4/28/2017 5:54:55 PM
Subject: For review & processing: draft proposed step 1 WOTUS rule for OMB review
[EO12866 WOTUS 2040-AF74 NPRM FRN 20170428.docx](#)
[Signed OWOW to AAA transmittal.pdf](#)
[OMB Review Memo Transmittal AAA To OP Step 1 WOTUS.docx](#)

Hi Sandy:

Attached please find the package “Proposed Request for Public Comments on the Definition of Waters of the United States – Recodification of Preexisting Rules,” ready for OMB interagency review. The attachments include:

- [REDACTED] The draft proposal (preamble and rule text)
- [REDACTED] A .pdf of John Goodin’s signed transmittal of the package to Mike Shapiro
- [REDACTED] A Word transmittal memo for Mike’s transmitting the package to OP’s Samantha Davis.

Based on our conversation, I understand these three documents are sufficient for you to oversee OW’s review and transmission of the package to OP for subsequent uploading to OMB. In addition, I am bringing a hardcopy of the three documents over as soon as I push “send” on this email. Please let me know if there’s anything additional you need.

Thanks, as always, for your help!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Weinstock, Larry[Weinstock.Larry@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Downing, Donna
Sent: Fri 4/28/2017 4:49:56 PM
Subject: FYI -- Downing's notes from the tribal webinar
[Tribal Consultation Webinar 4-27-17.docx](#)

Hi folks:

Attached FYI are my notes from yesterday's Tribal Webinar. I'll also post them on the Sharepoint site. Figured I'd get them out before taking off on another business trip.

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

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1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Fri 4/28/2017 3:20:23 PM
Subject: FOR QUICK REVIEW: WOTUS step-1 transmittal memoranda, and Sandy's description of next steps
OMB Review Memo Transmittal AAA To OP Step 1 WOTUS.docx
OMB Review Memo Transmittal OWOW to AAA Step 1 WOTUS.docx

Hi Mindy:

As you requested, I talked with Sandy about the steps we should follow to get the Step 1 package on its way today. First, **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 have drafted those memos and they are attached for your review.

Second, **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please let me know if you have suggested edits to the attached memos (at a minimum, remind me what is Samantha's last names, and what is the best phone number for Mike). In the meantime, I'll put Romell and Darren on notice I'll be trotting by with a memo for his signature.

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Bennett, Brittany[bennett.brittany@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Downing, Donna
Sent: Thur 4/27/2017 9:14:38 PM
Subject: FW: Summary of EPW Hearing: A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule
Hearing Summary Senate EPW Review of WOTUS 04-26-17.docx

FYI...

From: Barbery, Andrea
Sent: Thursday, April 27, 2017 5:05 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: Summary of EPW Hearing: A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule

Y'all probably already saw the hearing but I wanted to share Denis' excellent summary. See also [this link](#) to Pruitt's statement.

From: Borum, Denis
Sent: Thursday, April 27, 2017 4:45 PM
To: AO-OCIR Everyone <AOOCIR_Everyone@epa.gov>; RCL's <CNRCLsOIntergov_Contacts@epa.gov>
Cc: Peck, Gregory <Peck.Gregory@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>
Subject: Summary of EPW Hearing: A Review of the Technical, Scientific, and Legal Basis of the WOTUS Rule

All –

Please see attached and let me know of any questions. Thank you

Denis

Denis R. Borum

Congressional Liaison Specialist

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W. (MC-1301A)

Washington, D.C. 20460

(202) 564-4836 (phone)

(202) 501-1549 (fax)

borum.denis@epa.gov (e-mail)

From: Downing, Donna
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Declined: Proposed Outreach Strategy for WOTUS Rulemaking
Start Date/Time: Mon 5/1/2017 2:15:00 PM
End Date/Time: Mon 5/1/2017 3:00:00 PM

Am scheduled to be presenting at a conference in Utah at that time on Monday. Sorry! Will hear what's up from Mindy and others able to attend. Thanks.

Donna

To: Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Downing, Donna
Sent: Thur 4/27/2017 12:44:27 AM
Subject: Donna's notes from the federalism meeting; will put up on Sharepoint when back in the office
Thursday
Federalism Meeting Notes.docx

Hi everybody:

FYI, here are my notes from the Federalism meeting. I'll put them on the Sharepoint site so that they can be consolidated with the others, once I'm in the office (Thursday am)

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 4/25/2017 11:47:17 PM
Subject: RE: next steps tribal meetings

Hey Damaris –

Are you out Wed-Friday, or Thurs-Monday? Either way I'm not likely to see you before you go, and wanted to wish you a lovely conference and time out of the office. I can from experience say that even work-related out-of-office experiences are restorative. Enjoy yourself, and we all will keep the home fires burning while you're gone.

Donna

From: Kwok, Rose
Sent: Tuesday, April 25, 2017 7:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: next steps tribal meetings

Thanks, Damaris. I've made some edits to the documents on SharePoint. One thought on the slides –

Deliberative Process / Ex. 5

Also – on the WOTUS “history” slide, it might be helpful to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If folks think something like this is helpful, we have a slide that I can adapt.

From: Christensen, Damaris
Sent: Tuesday, April 25, 2017 12:57 PM
To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: next steps tribal meetings

Hi all,

I am going to be out of the office for three days, but time is precious when we are working on short notice. I want to follow up on a couple of things – most importantly, the NCAI meeting.

First, we've done a lot. The consult letter was signed by the Administrator (!); mailed out to all the tribes; two webinars are set up; the powerpoint is almost finalized; and seems like we have a solid plan with Region 9 for the RTOC meeting.

There are also some outstanding issues.

1. Karen, I know the **contact list** Chip provided was **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

2. We need to touch base on the **NCAI meeting**. Brittany, in my absence, can you take the program lead with working with Karen and maybe Army on this? I have some vague recollection that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

a. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

b. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

3. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 It's great if we can set that up this week, but if we can't, next week should be fine. Likewise, Brittany, in my absence, can you please take the lead on working with Karen to identify the people who should be involved and set up a meeting? It may make sense to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

FWIW I am available all day tomorrow but not so much Thursday and Friday.

Dolores, I know you don't have a great deal of time available right now, which is why I've asked Brittany to step up and work with Karen on these pieces. I don't feel the need to be kept abreast of every decision, just really on where we land and why. I'll let you coordinate with Brittany on your level of involvement, and of course we are going to rely on Karen no matter what. ☺

Thanks, all!

Damaris

From: Gude, Karen
Sent: Wednesday, April 19, 2017 7:51 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>
Subject: RE: Draft consult email language...and trial email lists

Many thanks for the review and edits, Damaris!

Just a few things:

● ☐

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

•□□□□□□ When you get a chance, we should all circle back on a possible Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 . Felicia circled back with me, and it sounds like Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 So, moving forward, I may need to work through
Felicia regardless.) We could Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Christensen, Damaris

Sent: Tuesday, April 18, 2017 10:09 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: Draft consult email language...and trial email lists

Adding in the edited document, sorry, it's late. ☺

From: Christensen, Damaris

Sent: Tuesday, April 18, 2017 9:35 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: Draft consult email language...and trial email lists

Thanks Karen.

I made some changes –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'm not sure how long the list Chip provided was, but if you have a chance I think

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'm sorry you weren't able to get an updated contact list from them.

We'll stay in touch regarding the May R9 RTOC and the NCAI conference, but generally your outreach plan sounds good.

I hope we get the signed letter early tomorrow. If you get slammed and can't deal with making the document 508 compliant, let us know. Unfortunately almost everyone will be pretty crazy tomorrow as we are getting ready for the federalism meeting. Rose would be my go-to for this. Could Chris Orvin help?

Thanks again for all your help today!

Damaris

From: Gude, Karen

Sent: Tuesday, April 18, 2017 3:58 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores

Subject: Draft consult email language...and trial email lists

Hello. I know that you have a million things going on at the moment, but just so that I'm prepared on my end once the tribal consultation letter has been signed by the Administrator, attached please find proposed draft email text to distribute to my tribal contacts list once the letter has been signed. I pulled language directly from the consult letter, and kept most of the language for context. It's lengthy; I erred on including too much detail, which may be too much...I'm interested in your thoughts/comments. If you have edits, please let me know.

The diagram illustrates the Deliberative Process / Ex. 5. It features a large central box labeled "Deliberative Process / Ex. 5". To the left of this box, there is a vertical list of five bullet points, each followed by a set of five empty square boxes. Below the central box, there is a horizontal bar labeled "Deliberative Process / Ex. 5". To the left of this bar, there is a vertical list of five bullet points, each followed by a set of five empty square boxes. The entire diagram is enclosed in a dashed border.

WOTUS Rule FOIAs 0025612

As for the in-person meetings, as you hopefully saw, we're scheduled for 5/4 at the R9 RTOC meeting, timing TBD. As soon as you have a better idea of a point person who will attend/lead the outreach meeting, please let me know, and I can connect them to Laura Ebbert, the R9 Regional Indian Coordinator. With regard to a possible session at the NCAI June meeting, I have an email out to Felicia with regard to reaching out to NCAI. She is on travel today. If possible, I'd like to touch base with her before connecting with NCAI...I should hopefully know more this week.

Finally, once we have the signed Administrator letter, I'll need the pdf...If you can help make this 508 compliant, that would be great. Otherwise, I can do it pretty quickly. I'll need to post a 508-compliant version to AIEO's TCOTS database.

I think that's it. If it sounds like I might have missed anything, please let me know.

Thanks!

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Downing, Donna
Sent: Tue 4/25/2017 11:44:31 PM
Subject: RE: next steps tribal meetings

BTW, there are several tribes here at the 404 basic training. They've expressed strong interest in the upcoming webinars and consultation. Gonna be fun!?

Donna

From: Kwok, Rose
Sent: Tuesday, April 25, 2017 7:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: next steps tribal meetings

Thanks, Damaris. I've made some edits to the documents on SharePoint. One thought on the slides – should we have a general slide about tribal consultation like we did for federalism?

Also – on the WOTUS “history” slide, it might be helpful to mention that Deliberative Process / Ex. 5

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|-------------------------------------|
| Deliberative Process / Ex. 5 |
| Deliberative Process / Ex. 5 |

If folks think something like this is helpful, we have a slide that I can adapt.

From: Christensen, Damaris
Sent: Tuesday, April 25, 2017 12:57 PM
To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: next steps tribal meetings

Hi all,

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First, we've done a lot. The consult letter was signed by the Administrator (!); mailed out to all the tribes; two webinars are set up; the powerpoint is almost finalized; and seems like we have a solid plan with Region 9 for the RTOC meeting.

There are also some outstanding issues.

1. Karen, I know the **contact list** Chip provided **Deliberative Process / Ex. 5**
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Thanks, all!

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

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| Deliberative Process / Ex. 5 | So, moving forward, I may need to work through Felicia regardless.) We could | Deliberative Process / Ex. 5 |
|------------------------------|--|------------------------------|

Deliberative Process / Ex. 5

Thanks again,

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Christensen, Damaris

Sent: Tuesday, April 18, 2017 10:09 PM

To: Gude, Karen <Gude.Karen@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: Draft consult email language...and trial email lists

Adding in the edited document, sorry, it's late. ☺

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Subject: RE: Draft consult email language...and trial email lists

Thanks Karen.

I made some changes – **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I'm not sure how long the list Chip provided was, but if you have a chance I think it would

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I'm sorry you weren't able to get an updated contact list from them.

We'll stay in touch regarding the May R9 RTOC and the NCAI conference, but generally your outreach plan sounds good.

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Thanks again for all your help today!

Damaris

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To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Draft consult email language...and trial email lists

Damaris and Delores,

Hello. I know that you have a million things going on at the moment, but just so that I'm prepared on my end once the tribal consultation letter has been signed by the Administrator, attached please find proposed draft email text to distribute to my tribal contacts list once the letter has been signed. I pulled language directly from the consult letter, and kept most of the language for context. It's lengthy; I erred on including too much detail, which may be too much...I'm interested in your thoughts/comments. If you have edits, please let me know.

And so that you are aware, my email distribution list will include:

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In addition, if you would like, I can **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 I have a few of these contacts already, and the rest shouldn't be too hard to track down online. I spoke with AIEO, and apparently **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Let me know your thoughts, and if you'd like me to includes these folks, I can work up an email list first thing tomorrow.

As for the in-person meetings, as you hopefully saw, we're scheduled for 5/4 at the R9 RTOC meeting, timing TBD. As soon as you have a better idea of a point person who will attend/lead the outreach meeting, please let me know, and I can connect them to Laura Ebbert, the R9

Regional Indian Coordinator. With regard to a possible session at the NCAI June meeting, I have an email out to Felicia with regard to reaching out to NCAI. She is on travel today. If possible, I'd like to touch base with her before connecting with NCAI...I should hopefully know more this week.

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I think that's it. If it sounds like I might have missed anything, please let me know.

Thanks!

Karen Gude

Tribal Program Coordinator

U.S. EPA/Office of Water

Phone: (202) 564-0831

From: Downing, Donna
Location: 3233 WJCE Call in Nonresponsive Conference Code/ Ex. 6
Importance: Normal
Subject: Declined: Proposed Outreach Strategy for WOTUS Rulemaking
Start Date/Time: Mon 5/1/2017 2:00:00 PM
End Date/Time: Mon 5/1/2017 2:45:00 PM

Sorry, I am in Utah giving a presentation on this day. However, I'll hear about what happened and next steps from Mindy and Damaris. Thanks!

Donna

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that **Deliberative Process / Ex. 5**

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Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: Martinez, Maria[Martinez.Maria@epa.gov]
From: Downing, Donna
Sent: Mon 4/24/2017 10:32:08 PM
Subject: RE: Question Regarding WOTUS-2 Workgroup Coordination

Hi Maria! I'll make sure you're added to the Regional workgroup list. The workgroup has met twice, and last time Alison F. participated on behalf of Region 6. Glad to have you aboard!

Donna

From: Martinez, Maria
Sent: Monday, April 24, 2017 6:25 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Question Regarding WOTUS-2 Workgroup Coordination

Howdy Donna,

I wanted to follow up with you concerning the WOTUS-2 Workgroup. I was sitting in on the Water Division Director's WOTUS-2 call last Thursday and I thought I had heard you mention that the WOTU-2 workgroup had already started holding calls? Is that correct? If so, my name may not have made it to the workgroup list.

Let me know either way. I just want to make sure I am staying engaged.

Thanks in advance,

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

From: Downing, Donna

Location: DCRoomWest7301/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 5/30/2017 5:00:00 PM

End Date/Time: Tue 5/30/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/25/2017 5:00:00 PM

End Date/Time: Tue 4/25/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call Nonresponsive Conference Code/ Ex. 6

Talk to you later!

Donna

From: Downing, Donna

Location: DCRoomWest7129/DC-CCW-OWOW; Telecom **Nonresponsive Conference Code/ Ex. 6**

Nonresponsive Conference Code/ Ex. 6

Importance: Normal

Subject: WOTUS-2 interagency staff meeting

Start Date/Time: Tue 4/11/2017 5:00:00 PM

End Date/Time: Tue 4/11/2017 6:00:00 PM

Agenda will precede each meeting.

The time's moved from our initial 11am in response to requests.

I've reserved a room at EPA, but some of the meetings could be held at the Corps if they prefer.

Telecom: call **Nonresponsive Conference Code/ Ex. 6**

Talk to you later!

Donna

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 7:00:00 PM
End Date/Time: Thur 5/4/2017 8:00:00 PM

Moving time back to accommodate a meeting with have with the Region 9 RTOC.

CALL-IN INFORMATION: Nonresponsive Conference Code/ Ex. 6

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

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Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: 3233 WJC East
Importance: Normal
Subject: Accepted: HOLD: Waters of the United States Tribal Webinar
Start Date/Time: Thur 4/27/2017 6:00:00 PM
End Date/Time: Thur 4/27/2017 7:30:00 PM

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Accepted: Save the Date for R9 RTOC WOTUS presentation
Start Date/Time: Thur 5/4/2017 6:00:00 PM
End Date/Time: Thur 5/4/2017 7:00:00 PM

Thanks, Rose! Yes, we'll need to reschedule the workgroup meeting anyway because of its overlap with the WOTUS presentation.

Just talked with Jason Brush here about the R9 RTOC...

Donna

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Mon 4/24/2017 8:02:06 PM
Subject: RE: Meeting Forward Notification: WOTUS-2 interagency staff meeting

Thanks for forwarding to Carol, Damaris. I'll add her to the repeating meeting invitation.

Donna

-----Original Appointment-----

From: Microsoft Outlook **On Behalf Of** Christensen, Damaris

Sent: Monday, April 24, 2017 2:49 PM

To: Downing, Donna

Subject: Meeting Forward Notification: WOTUS-2 interagency staff meeting

When: Tuesday, May 30, 2017 5:00 PM-6:00 PM (UTC+00:00) Monrovia, Reykjavik.

Where: DCRoomWest7301/DC-CCW-OWOW; Telecom Nonresponsive Conference Code/ Ex. 6

Nonresponsive Conference Code/ Ex. 6

Your meeting was forwarded

Christensen, Damaris has forwarded your meeting request to additional recipients.

Meeting

WOTUS-2 interagency staff meeting

Meeting Time

Tuesday, May 30, 2017 1:00 PM-2:00 PM.

Recipients

Peterson, Carol

Downing, Donna

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

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Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Hi folks:

As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

Please note that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Do let me know if you would prefer not to be on the workgroup.

Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

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As you know, EPA and the Army Corps are responding to the Executive Order to consider and replace the current definition of “waters of the US.” When various policies get considered as part of that effort, it will be helpful to have a small workgroup to provide program- and field-based insights regarding implementation issues and implications. We had the workgroup kick-off meeting on April 6th. This invitation is for is the recurring biweekly follow-up meeting. I’ll schedule additional meetings as developments warrant.

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Deliberative Process / Ex. 5

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Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 5/4/2017 6:30:00 PM
End Date/Time: Thur 5/4/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

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Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW; DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 6/1/2017 6:30:00 PM
End Date/Time: Thur 6/1/2017 7:30:00 PM

Moving time back 90 minutes to accommodate the monthly Wetlands Program Call.

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Deliberative Process / Ex. 5

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Donna

(202) 566-1367

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Recurring WOTUS Regional/HQ Staff workgroup meeting
Start Date/Time: Thur 4/20/2017 5:00:00 PM
End Date/Time: Thur 4/20/2017 6:00:00 PM

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Deliberative Process / Ex. 5

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Feel free to give me a call if you have any questions or suggestions. Hope you can join us at Thursday’s meeting!

Donna

(202) 566-1367

To: Cantilli, Robert[Cantilli.Robert@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Alexander, Laurie[Alexander.Laurie@epa.gov]
Cc: Fegley, Robert[Fegley.Robert@epa.gov]
From: Downing, Donna
Sent: Thur 4/20/2017 8:45:36 PM
Subject: RE: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Yes, Bob, I'm adding you to the workgroup invitation and look forward to your participation. Also, this is **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Stay tuned for the invitation!

Donna

From: Cantilli, Robert
Sent: Thursday, April 20, 2017 2:44 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Alexander, Laurie <Alexander.Laurie@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fegley, Robert <Fegley.Robert@epa.gov>
Subject: RE: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Thanks for the info but can we be included in future workgroup meetings? Any reason we were not invited? (We are one of the 4 core offices required to concur on all significant regs.) I noticed other core offices were in attendance – OGC, OECA. Bob.

From: Kwok, Rose
Sent: Thursday, April 20, 2017 1:55 PM
To: Cantilli, Robert <Cantilli.Robert@epa.gov>; Alexander, Laurie <Alexander.Laurie@epa.gov>
Subject: FW: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some

WOTUS-related materials

The connectivity report was brought up several times at the federalism meeting yesterday. Laurie – I can touch base with you tomorrow at our 10 am call. Thanks! Bob, let me know if you have questions.

From: Downing, Donna

Sent: Thursday, April 20, 2017 12:03 PM

To: Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; DCRoomWest7301/DC-CCW-OWOW <DCRoomWest7301@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Hi everybody:

Our biweekly Region-HQ WOTUS meeting is scheduled for today at 1pm. The agenda includes:

- A Sharepoint site for sharing documents among Workgroup members

- Update on Step 1 and Step 2 rules and preambles
- Federalism and tribal consultation: progress and upcoming activities
- **Deliberative Process / Ex. 5**

Those in Federal Triangle will be meeting in 7301 EPA West, the Potomac Conference Room.
CALL-IN INFORMATION: **Nonresponsive Conference Code/ Ex. 6**

Also attached FYI is the powerpoint used for yesterday's Federalism consultation with states, and talking points that senior leadership have OK'd for use when talking with outside groups. While the talking points can be used to talk with outside groups, please don't distribute them outside EPA at this point.

Talk to you at 1pm!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Downing, Donna
Sent: Thur 4/20/2017 4:43:20 PM
Subject: RE: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Sure!

From: Auerbach, Daniel
Sent: Thursday, April 20, 2017 12:39 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Re: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials

Are you okay if I try to call in? EZtech just bumped an appointment into the window...

From: Downing, Donna
Sent: Thursday, April 20, 2017 12:03:29 PM
To: Sachs, Erica; Williams, Ann; Keating, Jim; Bennett, Brittany; Eisenberg, Mindy; McDavit, Michael W.; Goodin, John; Balasa, Kate; Palomaki, Ashley; DCRoomWest7301/DC-CCW-OWOW; Yu, Yone; Weaver, Kerryann; Somerville, Eric; Jensen, Stacey M CIV USARMY HQDA (US); Montella, Daniel; Lapp, Jeffrey; Shamet, Stefania; Able, Tony; Melgin, Wendy; Schaller, Andrea; Fontenot, Alison; Schafer, Jeannette; McCarthy, Julia; Livingston, Peggy; Leidy, Robert; Dean, Heather; Szalay, Endre; Cherry, Andrew; Stokely, Peter; Wehling, Carrie; Kupchan, Simma; Flannery-Keith, Erin; Kwok, Rose; Christensen, Damaris; Auerbach, Daniel; Ludwig-Monty, Sarah; Speir, Jeffrey; Connors, Sandra; Wesson, Dolores
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To: Sachs, Erica[Sachs.Erica@epa.gov]; Williams, Ann[williams.ann@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Balasa, Kate[balasa.kate@epa.gov]; Palomaki, Ashley[Palomaki.Ashley@epa.gov]; DCRoomWest7301/DC-CCW-OWOW[DCRoomWest7301@epa.gov]; Yu, Yone[yu.yone@epa.gov]; Weaver, KerryAnn[weaver.kerryann@epa.gov]; Somerville, Eric[Somerville.Eric@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]; Montella, Daniel[Montella.Daniel@epa.gov]; Lapp, Jeffrey[lapp.jeffrey@epa.gov]; Stefania Shamet[Shamet.Stefania@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Melgin, Wendy[melgin.wendy@epa.gov]; Schaller, Andrea[schaller.andrea@epa.gov]; Fontenot, Alison[Fontenot.Alison@epa.gov]; Schafer, Jeannette[schafer.jeannette@epa.gov]; McCarthy, Julia[McCarthy.Julia@epa.gov]; Livingston, Peggy[Livingston.Peggy@epa.gov]; Leidy, Robert[Leidy.Robert@epa.gov]; Dean, Heather[Dean.Heather@epa.gov]; Szalay, Endre[Szalay.Endre@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Peter Stokely[Stokely.Peter@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]

From: Downing, Donna
Sent: Thur 4/20/2017 4:03:30 PM
Subject: Agenda for today's WOTUS-2 Regional-HQ Workgroup Meeting, plus some WOTUS-related materials
[federalism FINAL ppt 4-19-17.pptx](#)
[draft Basic Talking Points.docx](#)

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Hanson, Andrew[Hanson.Andrew@epa.gov]
From: Downing, Donna
Sent: Tue 4/18/2017 8:54:07 PM
Subject: FW: Clean Water Rule Conference Call

Hi Damaris and Drew:

I got an email from Roger Gwinn of the Ferguson Group, asking for a call-in number for the "Clean Water Rule Conference Call." It now turns out that the Ferguson Group represents the National Association of Towns and Townships. As part of Federalism, do firms that represent the targeted organizations participate, whether it be in person or by phone? Anyway, if firms representing national associations are invited, could you please forward the appropriate telecom information? I wasn't sure of your policies so figured it was better to forward this one to you.

Damaris, I understand from that that the representative for the National Association of Towns and Townships listed as attending is Jennifer Imo.

Donna

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Washington, DC 20004

From: Roger Gwinn [mailto:rgwinn@tfgnet.com]
Sent: Tuesday, April 18, 2017 4:30 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Clean Water Rule Conference Call

We represent the National Association of Towns and Townships. We were originally planning to attend in person. We cannot do that now. If there is no opportunity to dial-in, that's fine. Thanks.

Roger

From: Downing, Donna [mailto:Downing.Donna@epa.gov]
Sent: Tuesday, April 18, 2017 4:08 PM
To: Roger Gwinn <rgwinn@tfgnet.com>
Subject: RE: Clean Water Rule Conference Call

The April 19, 2017 Federalism Consultation meeting on the definition of "Waters of the United

States” is not open to the public. Consulting with state and local government officials, or their representative national organizations, is a normal and important step in the rulemaking process prior to proposing regulations that may have implications for federalism as defined by EPA’s policy for implementing Executive Order 13132. This executive order provides for pre-proposal discussions with elected state and local officials and their associations and it is agency policy that this is not an open meeting but rather part of the deliberative process.

There will be other opportunities for discussion and public comment as the agencies comply with the February 28, 2017, Presidential Executive Order on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” and embark upon rulemaking to define “Water of the U.S.”

From: Roger Gwinn [<mailto:rgwinn@tfgnet.com>]
Sent: Tuesday, April 18, 2017 12:42 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Clean Water Rule Conference Call

Is there dial-in availability for this meeting?

W Roger Gwinn
The Ferguson Group
1130 Connecticut Avenue, N.W.
Suite 300, Washington, DC 20036
202-261-6006 (Office)
202-255-5759 (Cell)
202-331-1598 (Fax)
roger.gwinn@thefergusongroup.com

[Spam](#)
[Phish/Fraud](#)
[Not spam](#)
[Forget previous vote](#)

From: Downing, Donna
Location: DCRoomWest7129/DC-CCW-OWOW
Importance: Normal
Subject: Room for WDD call (in case we don't fit in John's office)
Start Date/Time: Thur 4/20/2017 7:30:00 PM
End Date/Time: Thur 4/20/2017 8:30:00 PM
WDD Call - 2017 April 20 - WOTUS-2 Update v2.docx

I know John and Mindy are attending, but think it could be useful for Damaris and Rose to hear the conversation ... if they have the time available. I'll also attach the 1-pager so we all have the final version.

Donna

To: Balasa, Kate[balasa.kate@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Tue 4/18/2017 4:31:54 PM
Subject: One-pager for WOTUS-2 WDD briefing scheduled for 4/20
WDD Call - 2017 April 20 - WOTUS-2 Update v2.docx

Hi Kate:

As request ed, here's a one-page issue paper, as background for the Waters of the US rulemaking discussion with the WDDs at 2:30 Central on April 20th.

Please let me know if you have any questions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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downing.donna@epa.gov

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Washington, DC 20460

Delivery Address:

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Washington, DC 20004

From: Balasa, Kate

Sent: Tuesday, April 18, 2017 10:47 AM

To: Downing, Donna <Downing.Donna@epa.gov>

Subject: Your VM

Hi Donna,

Thanks for your call and sorry I missed you. That all sounds like a plan. I'll look for something from you later on today. Thanks a lot for working on the 1 pager.

Best regards,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Downing, Donna
Location: DCRoomWest7301/DC-CCW-OWOW
Importance: Normal
Subject: Listening room for staff interested in federalism discussions on WOTUS-2
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

Many folks asked for a room from which to listen in ... here's a room reserved for that purpose.

Donna

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 4/18/2017 2:39:58 PM
Subject: RE: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Thanks for the quick look. You're welcome to attend but I don't think it's really necessary given all the other things going on.

Donna

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 10:39 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Looks good to me, let me know if you want me to attend the call.

From: Downing, Donna
Sent: Tuesday, April 18, 2017 10:36 AM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: For Quick Review -- draft materials for WDD call re WOTUS2, scheduled for Thursday

Hi John:

Attached is a one-page background document for Thursday's WDD call giving them an update on WOTUS-2. The one-pager follows Region 5's preferred format, and reflects Mindy's review. Region 5 is really interested in sending this out asap, so any review you could slip into your crazy schedule would be much appreciated. Thanks!

Donna

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Washington, DC 20004

Hot Topics Call
Waters of the U.S. Rulemaking
April 20, 2017
2:30-3:30pm Central, 3:30-4:30pm Eastern
Call in number: **Nonresponsive Conference Code/ Ex. 6**

| | | |
|--------------------|------------------------------------|--------------------------------|
| 2:00 – 2:10 | Roll Call | Regions/HQ Offices |
| 2:10 – 2:30 | Background and Presentation | Mindy Eisenberg, Donna Downing |
| 2:30-2:45 | Discussion Questions | Mindy Eisenberg/All |

BACKGROUND: As part of a two-step process, the Environmental Protection Agency and the Department of the Army, Army Corps of Engineers are developing a proposed rule to rescind the 2015 regulatory definition of “waters of the United States,” and reinstate the regulatory framework that was in place prior to the 2015 rule and is in place now as a result of the current stay by the U.S. Court of Appeals for the Sixth Circuit of the 2015 Rule. The agencies will subsequently propose a rule to revise the definition of waters of the United States consistent with direction in an Executive Order signed on February 28, 2017, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

PURPOSE: To update WDDs on the fast-moving effort for both rulemakings, including general approach, schedule, and Regional involvement.

During the call, Mindy Eisenberg and key staff will **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

DISCUSSION QUESTIONS:

- 1)
- 2)
- 3)
- 4)

Deliberative Process / Ex. 5

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
 - Step 1
 - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority of federal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decades until a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to “Relatively Permanent” Waters

Perennial plus
streams with
“seasonal” flow

Current practice:
seasonal flow =
about 3 months
(varies
regionally)

Perennial plus
streams with another
measure of flow

Use appropriate,
implementable
metrics, e.g.,
frequency of flow,
intersecting water
table

Perennial streams
only

Streams
that carry flow
throughout the
year except in
extreme drought

Other

Thoughts?

Potential Approaches to Wetlands with a “Continuous Surface Connection”

Surface connection
even through non-
jurisdictional feature

Current practice
considers directly
abutting wetlands
and those with a
continuous surface
connection,
regardless of
distance, to be
jurisdictional

Some degree of
connectivity

Use appropriate,
implementable
metrics, e.g.,
distance

Wetland must
directly touch
jurisdictional waters

Only wetlands that
directly touch a
jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?
2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?
4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

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Informal WOTUS-2 Field and HQ Workgroup
April 14, 2017

This is a staff-level working group to help provide program- and field-based insights regarding “waters of the US” implementation and implications. Workgroup membership is limited at this point; please contact Donna Downing if you would like to add or substitute a workgroup member from your office.

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Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 328

Environmental Protection Agency

40 CFR Parts 110, 112, 116, *et al.*

Clean Water Rule: Definition of “Waters of the United States”; Final Rule

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****33 CFR Part 328****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401**

[EPA-HQ-OW-2011-0880; FRL-9927-20-OW]

RIN 2040-AF30

Clean Water Rule: Definition of "Waters of the United States"

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense, and Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are publishing a final rule defining the scope of waters protected under the Clean Water Act (CWA or the Act), in light of the statute, science, Supreme Court decisions in *U.S. v. Riverside Bayview Homes*, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC), and *Rapanos v. United States* (Rapanos), and the agencies' experience and technical expertise. This final rule reflects consideration of the extensive public comments received on the proposed rule. The rule will ensure protection for the nation's public health and aquatic resources, and increase CWA program predictability and consistency by clarifying the scope of "waters of the United States" protected under the Act.

DATES: This rule is effective on August 28, 2015. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Downing, Office of Water (4502-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number 202-566-2428; email address: CWAwaters@epa.gov v. Ms. Stacey Jensen, Regulatory Community of Practice (CECW-CO-R), U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314; telephone number 202-761-5856; email address: USACE_CWA_Rule@usace.army.mil.

SUPPLEMENTARY INFORMATION: This final rule does not establish any regulatory

requirements. Instead, it is a definitional rule that clarifies the scope of "waters of the United States" consistent with the Clean Water Act (CWA), Supreme Court precedent, and science. Programs established by the CWA, such as the section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the section 404 permit program for discharge of dredged or fill material, and the section 311 oil spill prevention and response programs, all rely on the definition of "waters of the United States." Entities currently are, and will continue to be, regulated under these programs that protect "waters of the United States" from pollution and destruction.

State, tribal, and local governments have well-defined and longstanding relationships with the Federal government in implementing CWA programs and these relationships are not altered by the final rule. Forty-six states and the U.S. Virgin Islands have been authorized by EPA to administer the NPDES program under section 402, and two states have been authorized by the EPA to administer the section 404 program. All states and forty tribes have developed water quality standards under the CWA for waters within their boundaries. A federal advisory committee has recently been announced to assist states in identifying the scope of waters assumable under the section 404 program.

The scope of jurisdiction in this rule is narrower than that under the existing regulation. Fewer waters will be defined as "waters of the United States" under the rule than under the existing regulations, in part because the rule puts important qualifiers on some existing categories such as tributaries. In addition, the rule provides greater clarity regarding which waters are subject to CWA jurisdiction, reducing the instances in which permitting authorities, including the states and tribes with authorized section 402 and 404 CWA permitting programs, would need to make jurisdictional determinations on a case-specific basis.

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I. General Information**A. How can I get copies of this document and related information?**

1. *Docket.* An official public docket for this action has been established under Docket Id. No. EPA-HQ-OW-2011-0880. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket also includes a Technical Support Document that provides additional legal and scientific discussion for issues raised in this rule, and the Response to Comments document. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m.

to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is 202-566-2426. A reasonable fee will be charged for copies.

2. **Electronic Access.** You may access this **Federal Register** document electronically under the “**Federal Register**” listings at <http://www.regulations.gov>. An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may access EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility.

B. Under what legal authority is this rule issued?

The authority for this rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, including sections 301, 304, 311, 401, 402, 404 and 501.

II. Executive Summary

In this final rule, the agencies clarify the scope of “waters of the United States” that are protected under the Clean Water Act (CWA), based upon the text of the statute, Supreme Court decisions, the best available peer-reviewed science, public input, and the agencies’ technical expertise and experience in implementing the statute. This rule makes the process of identifying waters¹ protected under the CWA easier to understand, more predictable, and consistent with the law and peer-reviewed science, while protecting the streams and wetlands that form the foundation of our nation’s water resources.

Congress enacted the CWA “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” section 101(a), and to complement statutes that protect the navigability of waters, such as the Rivers and Harbors Act. 33 U.S.C. 401,

403, 404, 407. The CWA is the nation’s single most important statute for protecting America’s clean water against pollution, degradation, and destruction. To provide that protection, the Supreme Court has consistently agreed that the geographic scope of the CWA reaches beyond waters that are navigable in fact. Peer-reviewed science and practical experience demonstrate that upstream waters, including headwaters and wetlands, significantly affect the chemical, physical, and biological integrity of downstream waters by playing a crucial role in controlling sediment, filtering pollutants, reducing flooding, providing habitat for fish and other aquatic wildlife, and many other vital chemical, physical, and biological processes.

This final rule interprets the CWA to cover those waters that require protection in order to restore and maintain the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. This interpretation is based not only on legal precedent and the best available peer-reviewed science, but also on the agencies’ technical expertise and extensive experience in implementing the CWA over the past four decades. The rule will clarify and simplify implementation of the CWA consistent with its purposes through clearer definitions and increased use of bright-line boundaries to establish waters that are jurisdictional by rule and limit the need for case-specific analysis. The agencies emphasize that, while the CWA establishes permitting requirements for covered waters to ensure protection of water quality, these requirements only apply with respect to discharges of pollutants to the covered water. In the absence of a discharge of a pollutant, the CWA does not impose permitting restrictions on the use of such water.

Additionally, Congress has exempted certain discharges, and the rule does not affect any of the exemptions from CWA section 404 permitting requirements provided by CWA section 404(f), including those for normal farming, ranching, and silviculture activities. CWA section 404(f); 40 CFR 232.3; 33 CFR 323.4. This rule not only maintains current statutory exemptions, it expands regulatory exclusions from the definition of “waters of the United States” to make it clear that this rule does not add any additional permitting requirements on agriculture. The rule also does not regulate shallow subsurface connections nor any type of groundwater, erosional features, or land use, nor does it affect either the existing statutory or regulatory exemptions from

NPDES permitting requirements, such as for agricultural stormwater discharges and return flows from irrigated agriculture, or the status of water transfers. CWA section 402(l)(1); CWA section 402(l)(2); CWA section 502(14); 40 CFR 122.3(f); 40 CFR 122.2.

Finally, even where waters are covered by the CWA, the agencies have adopted many streamlined regulatory requirements to simplify and expedite compliance through the use of measures such as general permits and standardized mitigation measures. The agencies will continue to develop general permits and simplified procedures, particularly as they affect crossings of covered ephemeral and intermittent tributaries jurisdictional under this rule to ensure that projects that offer significant social benefits, such as renewable energy development, can proceed with the necessary environmental safeguards while minimizing permitting delays.

The jurisdictional scope of the CWA is “navigable waters,” defined in section 502(7) of the statute as “waters of the United States, including the territorial seas.” The term “navigable waters” is used in a number of provisions of the CWA, including the section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the section 404 permit program, the section 311 oil spill prevention and response program,² the water quality standards and total maximum daily load programs (TMDL) under section 303, and the section 401 state water quality certification process. However, while there is only one CWA definition of “waters of the United States,” there may be other statutory factors that define the reach of a particular CWA program or provision.³

² While section 311 uses the phrase “navigable waters of the United States,” EPA has interpreted it to have the same breadth as the phrase “navigable waters” used elsewhere in section 311, and in other sections of the CWA. See *United States v. Texas Pipe Line Co.*, 611 F.2d 345, 347 (10th Cir. 1979); *United States v. Ashland Oil & Transp. Co.*, 504 F.2d 1317, 1324–25 (6th Cir. 1974). In 2002, EPA revised its regulatory definition of “waters of the United States” in 40 CFR part 112 to ensure that the language of the rule was consistent with the regulatory language of other CWA programs. *Oil Pollution Prevention & Response; Non-Transportation-Related Onshore & Offshore Facilities*, 67 FR 47042, July 17, 2002. A district court vacated the rule for failure to comply with the Administrative Procedure Act, and reinstated the prior regulatory language. *American Petroleum Ins. v. Johnson*, 541 F. Supp. 2d 165 (D. D.C. 2008). However, EPA interprets “navigable waters of the United States” in CWA section 311(b), in the pre-2002 regulations, and in the 2002 rule to have the same meaning as “navigable waters” in CWA section 502(7).

³ For example, the CWA section 402 (33 U.S.C. 1342) program regulates discharges of pollutants

Continued

¹ The agencies use the term “water” and “waters” in categorical reference to rivers, streams, ditches, wetlands, ponds, lakes, oxbows, and other types of natural or man-made aquatic systems, identifiable by the water contained in these aquatic systems or by their chemical, physical, and biological indicators. The agencies use the terms “waters” and “water bodies” interchangeably in this preamble.

Existing regulations (last codified in 1986) define “waters of the United States” as traditional navigable waters, interstate waters, all other waters that could affect interstate or foreign commerce, impoundments of waters of the United States, tributaries, the territorial seas, and adjacent wetlands. 33 CFR 328.3; 40 CFR 122.2.⁴

However, the Supreme Court has issued three decisions that provide critical context and guidance in determining the appropriate scope of “waters of the United States” covered by the CWA. In *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985) (*Riverside*), the Court, in a unanimous opinion, deferred to the Corps’ ecological judgment that adjacent wetlands are “inseparably bound up” with the waters to which they are adjacent, and upheld the inclusion of adjacent wetlands in the regulatory definition of “waters of the United States.” *Id.* at 134. The Court observed that the broad objective of the CWA to restore and maintain the integrity of the Nation’s waters “incorporated a broad, systemic view of the goal of maintaining and improving water quality. . . . Protection of aquatic ecosystems, Congress recognized, demanded broad federal authority to control pollution, for ‘[w]ater moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.’ In keeping with these views, Congress chose to define the waters covered by the Act broadly.” *Id.* at 132–33 (citing Senate Report No. 92–414, p. 77 (1972)).

In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), the Supreme Court held that the use of “isolated” non-navigable intrastate ponds by migratory birds was not by itself a sufficient basis for the

exercise of federal regulatory authority under the CWA. Although the *SWANCC* decision did not call into question earlier decisions upholding the CWA’s coverage of wetlands or other waters “adjacent” to traditional navigable waters, it created uncertainty with regard to the jurisdiction of other waters and wetlands that, in many instances, may play an important role in protecting the integrity of the nation’s waters. The majority opinion in *SWANCC* introduced the concept that it was a “significant nexus” that informed the Court’s reading of CWA jurisdiction over waters that are not navigable in fact.

Five years later, in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*), all Members of the Court agreed that the term “waters of the United States” encompasses some waters that are not navigable in the traditional sense. In addition, Justice Kennedy’s opinion indicated that the critical factor in determining the CWA’s coverage is whether a water has a “significant nexus” to downstream traditional navigable waters such that the water is important to protecting the chemical, physical, or biological integrity of the navigable water, referring back to the Court’s decision in *SWANCC*. Justice Kennedy’s concurrence in *Rapanos* stated that to constitute a “water of the United States” covered by the CWA, “a water or wetland must possess a ‘significant nexus’ to waters that are or were navigable in fact or that could reasonably be so made.” *Id.* at 759 (Kennedy, J., concurring in the judgment) (citing *SWANCC*, 531 U.S. at 167, 172). Justice Kennedy concluded that wetlands possess the requisite significant nexus if the wetlands “either alone or in combination with similarly situated [wet]lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” 547 U.S. at 780.

In this rule, the agencies interpret the scope of the “waters of the United States” for the CWA using the goals, objectives, and policies of the statute, the Supreme Court case law, the relevant and available science, and the agencies’ technical expertise and experience as support. In particular, the agencies looked to the objective of the CWA “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” and the scientific consensus on the strength of the effects of upstream tributaries and adjacent waters, including wetlands, on downstream traditional navigable waters, interstate waters, and the

territorial seas. An important element of the agencies’ interpretation of the CWA is the significant nexus standard. This significant nexus standard was first informed by the ecological and hydrological connections the Supreme Court noted in *Riverside Bayview*, developed and established by the Supreme Court in *SWANCC*, and further refined in Justice Kennedy’s opinion in *Rapanos*. The agencies also utilized the plurality standard in *Rapanos* by establishing boundaries on the scope of “waters of the United States” and in support of the exclusions from the definition of “waters of the United States.” The analysis used by the agencies has been supported by all nine of the United States Courts of Appeals that have considered the issue.

The agencies assess the significance of the nexus in terms of the CWA’s objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” When the effects are speculative or insubstantial, the “significant nexus” would not be present. The science demonstrates that the protection of upstream waters is critical to maintaining the integrity of the downstream waters. The upstream waters identified in the rule as jurisdictional function as integral parts of the aquatic environment, and if these waters are polluted or destroyed, there is a significant effect downstream.

In response to the Supreme Court opinions, the agencies issued guidance in 2003 (post-*SWANCC*) and 2008 (post-*Rapanos*). However, these two guidance documents did not provide the public or agency staff with the kind of information needed to ensure timely, consistent, and predictable jurisdictional determinations. Many waters are currently subject to case-specific jurisdictional analysis to determine whether a “significant nexus” exists, and this time and resource intensive process can result in inconsistent interpretation of CWA jurisdiction and perpetuate ambiguity over where the CWA applies. As a result of the ambiguity that exists under current regulations and practice following these recent decisions, almost all waters and wetlands across the country theoretically could be subject to a case-specific jurisdictional determination.

Members of Congress, developers, farmers, state and local governments, energy companies, and many others requested new regulations to make the process of identifying waters protected under the CWA clearer, simpler, and faster. Chief Justice Roberts’ concurrence in *Rapanos* underscores

from “point sources” to “waters of the United States,” whether these pollutants reach jurisdictional waters directly or indirectly. The plurality opinion in *Rapanos* noted that “there is no reason to suppose that our construction today significantly affects the enforcement of §1342. . . . The Act does not forbid the ‘addition of any pollutant directly to navigable waters from any point source,’ but rather the ‘addition of any pollutant to navigable waters.’” 547 U.S. at 743.

⁴ There are numerous regulations that utilize the definition of “waters of the United States” and each is codified consistent with its place in a particular section of the Code of Federal Regulations. For simplicity, throughout the preamble the agencies refer to the rule as organized into (a), (b), (c) provisions and intend the reference to encompass the appropriate cites in each section of the Code of Federal Regulations. For example, a reference to (a)(1) is a reference to all instances in the CFR identified as subject to this rule that state “All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.”

the importance of this rulemaking effort.⁵ In this final rule, the agencies are responding to those requests from across the country to make the process of identifying waters protected under the CWA easier to understand, more predictable, and more consistent with the law and peer-reviewed science.

The agencies proposed a rule clarifying the scope of waters of the United States April 21, 2014 (79 FR 22188), and solicited comments for over 200 days. This final rule reflects the over 1 million public comments on the proposal, the substantial majority of which supported the proposed rule, as well as input provided through the agencies' extensive public outreach effort, which included over 400 meetings nationwide with states, small businesses, farmers, academics, miners, energy companies, counties, municipalities, environmental organizations, other federal agencies, and many others. The agencies sought comment on a number of approaches to specific jurisdictional questions, and many of these commenters and stakeholders urged EPA to improve upon the April 2014 proposal, by providing more bright line boundaries and simplifying definitions that identify waters that are protected under the CWA, all for the purpose of minimizing delays and costs, making protection of clean water more effective, and improving predictability and consistency for landowners and regulated entities.

The agencies' interpretation of the CWA's scope in this final rule is guided by the best available peer-reviewed science—particularly as that science informs the determinations as to which waters have a “significant nexus” with traditional navigable waters, interstate waters, or the territorial seas.

The relevant science on the relationship and downstream effects of waters has advanced considerably in recent years. A comprehensive report prepared by the EPA's Office of Research and Development entitled “Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence”⁶

(hereafter the Science Report) synthesizes the peer-reviewed science.

The Science Report provides much of the technical basis for this rule. The Science Report is based on a review of more than 1,200 peer-reviewed publications. EPA's Science Advisory Board (SAB) conducted a comprehensive technical review of the Science Report and reviewed the adequacy of the scientific and technical basis of the proposed rule. The Science Report and the SAB review confirmed that:

- Waters are connected in myriad ways, including physical connections and the hydrologic cycle; however, connections occur on a continuum or gradient from highly connected to highly isolated.
 - These variations in the degree of connectivity are a critical consideration to the ecological integrity and sustainability of downstream waters.
 - The critical contribution of upstream waters to the chemical, physical, and biological integrity of downstream waters results from the accumulative contribution of similar waters in the same watershed and in the context of their functions considered over time.
- The Science Report and the SAB review also confirmed that:
- Tributary streams, including perennial, intermittent, and ephemeral streams, are chemically, physically, and biologically connected to downstream waters, and influence the integrity of downstream waters.
 - Wetlands and open waters in floodplains and riparian areas are chemically, physically, and biologically connected with downstream waters and influence the ecological integrity of such waters.
 - Non-floodplain wetlands and open waters provide many functions that benefit downstream water quality and ecological integrity, but their effects on downstream waters are difficult to assess based solely on the available science.

Although these conclusions play a critical role in informing the agencies' interpretation of the CWA's scope, the agencies' interpretive task in this rule—determining which waters have a “significant nexus”—requires scientific and policy judgment, as well as legal interpretation. The science demonstrates that waters fall along a gradient of chemical, physical, and biological connection to traditional

navigable waters, and it is the agencies' task to determine where along that gradient to draw lines of jurisdiction under the CWA. In making this determination, the agencies must rely, not only on the science, but also on their technical expertise and practical experience in implementing the CWA during a period of over 40 years. In addition, the agencies are guided, in part, by the compelling need for clearer, more consistent, and easily implementable standards to govern administration of the Act, including brighter line boundaries where feasible and appropriate.

Major Rule Provisions

In this final rule, the agencies define “waters of the United States” to include eight categories of jurisdictional waters. The rule maintains existing exclusions for certain categories of waters, and adds additional categorical exclusions that are regularly applied in practice. The rule reflects the agencies' goal of providing simpler, clearer, and more consistent approaches for identifying the geographic scope of the CWA. The rule recognizes jurisdiction for three basic categories: Waters that are jurisdictional in all instances, waters that are excluded from jurisdiction, and a narrow category of waters subject to case-specific analysis to determine whether they are jurisdictional.

Decisions about waters in each of these categories are based on the law, peer-reviewed science, and the agencies' technical expertise, and were informed by public comments. This rule replaces existing procedures that often depend on individual, time-consuming, and inconsistent analyses of the relationship between a particular stream, wetland, lake, or other water with downstream waters. The agencies have greatly reduced the extent of waters subject to this individual review by carefully incorporating the scientific literature and by utilizing agency expertise and experience to characterize the nature and strength of the chemical, physical, and biological connections between upstream and downstream waters. The result of applying this scientific analysis is that the agencies can more effectively focus the rule on identifying waters that are clearly covered by the CWA and those that are clearly not covered, making the rule easier to understand, consistent, and environmentally more protective.

The jurisdictional categories reflect the current state of the best available science, and are based upon the law and Supreme Court decisions. The agencies will continue a transparent review of the science, and learn from on-going

⁵ Chief Justice Roberts' concurrence in *Rapanos* emphasized that “[a]gencies delegated rulemaking authority under a statute such as the Clean Water Act are afforded generous leeway by the courts in interpreting the statute they are entrusted to administer.” *Id.* at 758. Chief Justice Roberts made clear that, if the agencies had undertaken such a rulemaking, “the Corps and the EPA would have enjoyed plenty of room to operate in developing some notion of an outer bound to the reach of their authority.” *Id.* (Emphasis in original.)

⁶ U.S. Environmental Protection Agency, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the*

Scientific Evidence (Final Report), EPA/600/R-14/475F, (Washington, DC: U.S. Environmental Protection Agency, (2015)). <http://www.epa.gov/ncea>.

experience and expertise as the agencies implement the rule. If evolving science and the agencies' experience lead to a need for action to alter the jurisdictional categories, any such action will be conducted as part of a rule-making process.

The first three types of jurisdictional waters, traditional navigable waters, interstate waters, and the territorial seas, are jurisdictional by rule in all cases. The fourth type of water, impoundments of jurisdictional waters, is also jurisdictional by rule in all cases. The next two types of waters, "tributaries" and "adjacent" waters, are jurisdictional by rule, as defined, because the science confirms that they have a significant nexus to traditional navigable waters, interstate waters, or territorial seas. For waters that are jurisdictional by rule, no additional analysis is required.

The final two types of jurisdictional waters are those waters found after a case-specific analysis to have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas, either alone or in combination with similarly situated waters in the region. Justice Kennedy acknowledged the agencies could establish more specific regulations or establish a significant nexus on a case-by-case basis, *Rapanos* at 782, and for these waters the agencies will continue to assess significant nexus on a case-specific basis.

The major elements of the final rule are briefly summarized here.

Traditional Navigable Waters, Interstate Waters, Territorial Seas, and Impoundments of Jurisdictional Waters

Consistent with existing regulations and the April 2014 proposed rule, the final rule includes traditional navigable waters, interstate waters, territorial seas, and impoundments of jurisdictional waters in the definition of "waters of the United States." These waters are jurisdictional by rule.

Tributaries

Previous definitions of "waters of the United States" regulated all tributaries without qualification. This final rule more precisely defines "tributaries" as waters that are characterized by the presence of physical indicators of flow—bed and banks and ordinary high water mark—and that contribute flow directly or indirectly to a traditional navigable water, an interstate water, or the territorial seas. The rule concludes that such tributaries are "waters of the United States." The great majority of tributaries as defined by the rule are headwater streams that play an

important role in the transport of water, sediments, organic matter, nutrients, and organisms to downstream waters.

The physical indicators of bed and banks and ordinary high water mark demonstrate that there is sufficient volume, frequency, and flow in such tributaries to a traditional navigable water, interstate water, or the territorial seas to establish a significant nexus.

"Tributaries," as defined, are jurisdictional by rule.

The rule only covers as tributaries those waters that science tells us provide chemical, physical, or biological functions to downstream waters and that meet the significant nexus standard. The agencies identify these functions in the definition of "significant nexus" at paragraph (c)(5). Features not meeting this legal and scientific test are not jurisdictional under this rule. The rule continues the current policy of regulating ditches that are constructed in tributaries or are relocated tributaries or, in certain circumstances drain wetlands, or that science clearly demonstrates are functioning as a tributary. These jurisdictional waters affect the chemical, physical, and biological integrity of downstream waters. The rule further reduces existing confusion and inconsistency regarding the regulation of ditches by explicitly excluding certain categories of ditches, such as ditches that flow only after precipitation. Further, the rule explicitly excludes from the definition of "waters of the United States" erosional features, including gullies, rills, and ephemeral features such as ephemeral streams that do not have a bed and banks and ordinary high water mark.

Adjacent Waters

The agencies determined that "adjacent waters," as defined in the rule, have a significant nexus to traditional navigable waters, interstate waters, and the territorial seas based upon their hydrological and ecological connections to, and interactions with, those waters. Under this final rule, "adjacent" means bordering, contiguous, or neighboring, including waters separated from other "waters of the United States" by constructed dikes or barriers, natural river berms, beach dunes and the like. Further, waters that connect segments of, or are at the head of, a stream or river are "adjacent" to that stream or river. "Adjacent waters" include wetlands, ponds, lakes, oxbows, impoundments, and similar water features. However, it is important to note that "adjacent waters" do not include waters that are subject to

established normal farming, silviculture, and ranching activities as those terms are used in Section 404(f) of the CWA.

The final rule establishes a definition of "neighboring" for purposes of determining adjacency. In the rule, the agencies identify three circumstances under which waters would be "neighboring" and therefore "waters of the United States":

(1) Waters located in whole or in part within 100 feet of the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, an impoundment of a jurisdictional water, or a tributary, as defined in the rule.

(2) Waters located in whole or in part in the 100-year floodplain and that are within 1,500 feet of the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, an impoundment, or a tributary, as defined in the rule ("floodplain waters").

(3) Waters located in whole or in part within 1,500 feet of the high tide line of a traditional navigable water or the territorial seas and waters located within 1,500 feet of the ordinary high water mark of the Great Lakes.

The agencies emphasize that the rule has defined as "adjacent waters" those waters that currently available science demonstrates possess the requisite connection to downstream waters and function as a system to protect the chemical, physical, or biological integrity of those waters. The agencies also emphasize that the rule does not cover "adjacent waters" that are otherwise excluded. Further, the agencies recognize the establishment of bright line boundaries in the rule for adjacency does not in any way restrict states from considering state specific information and concerns, as well as emerging science to evaluate the need to more broadly protect their waters under state law. The CWA establishes both national and state roles to ensure that states specific circumstances are properly considered to complement and reinforce actions taken at the national level.

"Adjacent" waters as defined are jurisdictional by rule. The agencies recognize that there are individual waters outside of the "neighboring" boundaries stated above where the science may demonstrate through a case-specific analysis that there exists a significant nexus to a downstream traditional navigable water, interstate water, or the territorial seas. However, these waters are not determined jurisdictional by rule and will be evaluated through a case-specific analysis. The strength of the science and

the significance of the nexus will be established on a case-specific basis as described below.

Case-Specific Significant Nexus

The rule identifies particular waters that are not jurisdictional by rule but are subject to case-specific analysis to determine if a significant nexus exists and the water is a “water of the United States.” This category of case-specific waters is based upon available science and the law, and in response to public comments that encouraged the agencies to ensure more consistent determinations and reduce the complexity of conducting jurisdictional determinations. Consistent with the significant nexus standard articulated in the Supreme Court opinions, waters are “waters of the United States” if they significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. This determination will most typically be made on a water individually, but can, when warranted, be made in combination with other waters where waters function together.

In this final rule, the agencies have identified by rule, five specific types of waters in specific regions that science demonstrates should be subject to a significant nexus analysis and are considered similarly situated by rule because they function alike and are sufficiently close to function together in affecting downstream waters. These five types of waters are Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands. Consistent with Justice Kennedy's opinion in *Rapanos*, the agencies determined that such waters should be analyzed “in combination” (as a group, rather than individually) in the watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas when making a case-specific analysis of whether these waters have a significant nexus to traditional navigable waters, interstate waters, or territorial seas.

The final rule also provides that waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas and waters within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundments, or covered tributary are subject to case-specific significant nexus determinations, unless the water is excluded under paragraph (b) of the rule. The science available today does not establish that waters beyond those

defined as “adjacent” should be jurisdictional as a category under the CWA, but the agencies' experience and expertise indicate that there are many waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or out to 4,000 feet where the science demonstrates that they have a significant effect on downstream waters.

In circumstances where waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or within 4,000 feet of the high tide line or ordinary high water mark are subject to a case-specific significant nexus analysis and such waters may be evaluated as “similarly situated,” it must be first demonstrated that these waters function alike and are sufficiently close to function together in affecting downstream waters. The significant nexus analysis must then be conducted based on consideration of the functions provided by those waters in combination in the point of entry watershed. A “similarly situated” analysis is conducted where it is determined that there is a likelihood that there are waters that function together to affect downstream water integrity. To provide greater clarity and transparency in determining what functions will be considered in determining what constitutes a significant nexus, the final rule lists specific functions that the agencies will consider.

In establishing both the 100-year floodplain and the 4,000 foot bright line boundaries for these case-specific significant nexus determinations in the rule, the agencies are carefully applying the available science. Consistent with the CWA, the agencies will work with the states in connection with the prevention, reduction and elimination of pollution from state waters. The agencies will work with states to more closely evaluate state-specific circumstances that may be present within their borders and, as appropriate, encourage states to develop rules that reflect their circumstances and emerging science to ensure consistent and effective protection for waters in the states. As is the case today, nothing in this rule restricts the ability of states to more broadly protect state waters.

Exclusions

All existing exclusions from the definition of “waters of the United States” are retained, and several exclusions reflecting longstanding agency practice are added to the regulation for the first time.

Prior converted cropland and waste treatment systems have been excluded

from the definition of “waters of the United States” definition since 1992 and 1979 respectively, and continue to be excluded. Ministerial changes are made for purposes of clarity, but these two exclusions remain substantively and operationally unchanged. The agencies add exclusions for waters and features previously identified as generally exempt (e.g., exclusion for certain ditches that are not located in or drain wetlands) in preamble language from **Federal Register** documents by the Corps on November 13, 1986, and by EPA on June 6, 1988. This is the first time these exclusions have been established by rule. The agencies for the first time also establish by rule that certain ditches are excluded from jurisdiction, including ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary, and ditches with intermittent flow that are not a relocated tributary, or excavated in a tributary, or drain wetlands. The agencies add exclusions for groundwater and erosional features, as well as exclusions for some waters that were identified in public comments as possibly being found jurisdictional under proposed rule language where this was never the agencies' intent, such as stormwater control features constructed to convey, treat, or store stormwater, and cooling ponds that are created in dry land. These exclusions reflect the agencies' current practice, and their inclusion in the rule as specifically excluded furthers the agencies' goal of providing greater clarity over what waters are and are not protected under the CWA.

Role of States and Tribes Under the Clean Water Act

States and tribes play a vital role in the implementation and enforcement of the CWA. Section 101(b) of the CWA states that it is Congressional policy to preserve the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, to plan the development and use of land and water resources, and to consult with the Administrator with respect to the exercise of the Administrator's authority under the CWA.

Of particular importance, states and tribes may be authorized by the EPA to administer the permitting programs of CWA sections 402 and 404. Forty-six states and the U.S. Virgin Islands are authorized to administer the NPDES program under section 402, while two states administer the section 404 program. The CWA identifies the waters over which states may assume section 404 permitting jurisdiction. See CWA section 404(g)(1). The scope of waters

that are subject to state and tribal permitting is a separate inquiry and must be based on the statutory language in CWA section 404. States administer approved CWA section 404 programs for “waters of the United States” within the state, except those waters remaining under Corps jurisdiction pursuant to CWA section 404(g)(1) as identified in a Memorandum of Agreement between the state and the Corps. 40 CFR 233.14; 40 CFR 233.70(c)(2); 40 CFR 233.71(d)(2). EPA has initiated a separate process to address how the EPA can best clarify assumable waters for dredged and fill material permit programs pursuant to the Clean Water Act section 404(g)(1). 80 FR 13539 (Mar. 16, 2015). Additional CWA programs that utilize the definition of “waters of the United States” and are of importance to the states and tribes include the section 311 oil spill prevention and response program, the water quality standards and total maximum daily load (TMDL) programs under section 303, and the section 401 state water quality certification process.

States and federally-recognized tribes, consistent with the CWA, retain full authority to implement their own programs to more broadly and more fully protect the waters in their jurisdiction. Under section 510 of the CWA, unless expressly stated, nothing in the CWA precludes or denies the right of any state to establish more protective standards or limits than the Federal CWA. Congress has also provided roles for eligible Indian tribes to administer CWA programs over their reservations and expressed a preference for tribal regulation of surface water quality on Indian reservations to ensure compliance with the goals of the CWA. See 33 U.S.C. 1377; 56 FR 64876, 64878–79 (Dec. 12, 1991). Tribes also have inherent sovereign authority to establish more protective standards or limits than the Federal CWA. Where appropriate, references to states in this document may also include eligible tribes. Many states and tribes, for example, regulate groundwater, and some others protect wetlands that are vital to their environment and economy but outside the jurisdiction of the CWA. Nothing in this rule limits or impedes any existing or future state or tribal efforts to further protect their waters. In fact, providing greater clarity regarding what waters are subject to CWA jurisdiction will reduce the need for permitting authorities, including the states and tribes with authorized section 402 and 404 CWA permitting programs, to make jurisdictional determinations on a case-specific basis.

Overview of the Preamble

The remainder of this preamble is organized as follows. Section III (Significant Nexus Standard) provides additional background on the rule, including a discussion of Supreme Court precedent, the science underpinning the rule, and the agencies’ overall interpretive approach to applying the significant nexus standard. Section IV (Definition of Waters of the United States) explains the provisions of the final rule, including subsections on each of the major elements of the rule. Section V summarizes the economic analysis of the rule and Section VI addresses Related Acts of Congress, Executive Orders and Agency Initiatives.

III. Significant Nexus Standard

With this rule, the agencies interpret the scope of the “waters of the United States” for the CWA in light of the goals, objectives, and policies of the statute, the Supreme Court case law, the relevant and available science, and the agencies’ technical expertise and experience. The key to the agencies’ interpretation of the CWA is the significant nexus standard, as established and refined in Supreme Court opinions: Waters are “waters of the United States” if they, either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. The agencies interpret specific aspects of the significant nexus standard in light of the science, the law, and the agencies’ technical expertise: The scope of the region in which to evaluate waters when making a significant nexus determination; the waters to evaluate in combination with each other; and the functions provided by waters and strength of those functions, and when such waters significantly affect the chemical, physical, or biological integrity of the downstream traditional navigable waters, interstate waters, or the territorial seas.

In the rule, the agencies determine that tributaries, as defined (“covered tributaries”), and “adjacent waters”, as defined (“covered adjacent waters”), have a significant nexus to downstream traditional navigable waters, interstate waters, and the territorial seas and therefore are “waters of the United States.” In the rule, the agencies also establish that defined sets of additional waters may be determined to have a significant nexus on a case-specific basis: (1) Five specific types of waters

that the agencies conclude are “similarly situated” and therefore must be analyzed “in combination” in the watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas when making a case-specific significant nexus analysis; and (2) waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, or waters within 4,000 feet of the high tide line or ordinary high water mark of traditional navigable waters, interstate waters, the territorial seas, impoundments or covered tributaries. The rule establishes a definition of significant nexus, based on Supreme Court opinions and the science, to use when making these case-specific determinations.

Significant nexus is not a purely scientific determination. The opinions of the Supreme Court have noted that as the agencies charged with interpreting the statute, EPA and the Corps must develop the outer bounds of the scope of the CWA, while science does not provide bright line boundaries with respect to where “water ends” for purposes of the CWA. Therefore, the agencies’ interpretation of the CWA is informed by the Science Report and the review and comments of the SAB, but not dictated by them. With this context, this section addresses, first, the Supreme Court case law and the significant nexus standard, second, the relevant scientific conclusions reached by analysis of existing scientific literature, and third, the agencies’ significant nexus determinations underpinning the rule. Section IV of the preamble addresses in more detail the precise definitions of the covered waters promulgated by the agencies to provide the bright line boundaries identifying “waters of the United States.”

A. The Significant Nexus Standard

Congress enacted the CWA “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Section 101(a). The agencies’ longstanding regulations define “waters of the United States” for purposes of the Clean Water Act, and the Supreme Court has addressed the scope of “waters of the United States” protected by the CWA in three cases. The significant nexus standard evolved through those cases.

In *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985) (*Riverside*), which involved wetlands adjacent to a traditional navigable water in Michigan, the Court, in a unanimous opinion, deferred to the Corps’ ecological judgment that adjacent wetlands are “inseparably bound up” with the waters

to which they are adjacent, and upheld the inclusion of adjacent wetlands in the regulatory definition of “waters of the United States.” *Id.* at 134. The Court observed that the broad objective of the CWA to restore and maintain the integrity of the Nation’s waters “incorporated a broad, systemic view of the goal of maintaining and improving water quality Protection of aquatic ecosystems, Congress recognized, demanded broad federal authority to control pollution, for ‘[w]ater moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source.’ In keeping with these views, Congress chose to define the waters covered by the Act broadly.” *Id.* at 132–33 (citing Senate Report No. 92–414). The Court also recognized that “[i]n determining the limits of its power to regulate discharges under the Act, the Corps must necessarily choose some point at which water ends and land begins. Our common experience tells us that this is often no easy task: The transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs—in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of ‘waters’ is far from obvious.” *Id.* The Court then deferred to the agencies’ interpretation: “In view of the breadth of federal regulatory authority contemplated by the Act itself and the inherent difficulties of defining precise bounds to regulable waters, the Corps’ ecological judgment about the relationship between waters and their adjacent wetlands provides an adequate basis for a legal judgment that adjacent wetlands may be defined as waters under the Act.” *Id.* at 134.

The issue of CWA jurisdiction over “waters of the United States” was addressed again by the Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC). In SWANCC, the Court (in a 5–4 opinion) held that the use of “isolated” non-navigable intrastate ponds by migratory birds was not by itself a sufficient basis for the exercise of federal regulatory authority under the CWA. The SWANCC Court noted that in *Riverside* it had “found that Congress’ concern for the protection of water quality and aquatic ecosystems indicated its intent to regulate wetlands ‘inseparably bound up’ with the ‘waters’ of the United States” and that “[i]t was the significant nexus between the wetlands and

‘navigable waters’ that informed our reading of the CWA” in that case. *Id.* at 167. SWANCC did not invalidate any parts of the regulatory definition of “waters of the United States.”

Five years after SWANCC, the Court again addressed the term “waters of the United States” in *Rapanos v. United States*, 547 U.S. 715 (2006) (*Rapanos*). *Rapanos* involved two consolidated cases in which the CWA had been applied to wetlands adjacent to non-navigable tributaries of traditional navigable waters. All Members of the Court agreed that the term “waters of the United States” encompasses some waters that are not navigable in the traditional sense. A four-Justice plurality in *Rapanos* interpreted the term “waters of the United States” as covering “relatively permanent, standing or continuously flowing bodies of water” *Id.* at 739, that are connected to traditional navigable waters, *id.* at 742, as well as wetlands with a “continuous surface connection” to such water bodies, *id.* (Scalia, J., plurality opinion). The *Rapanos* plurality noted that its reference to “relatively permanent” waters did “not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,” or “seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months. . . .” *Id.* at 732 n.5 (emphasis in original).

Justice Kennedy concurred that the cases should be remanded for further decision making, and stated that “to constitute ‘navigable waters’ under the Act, a water or wetland must possess a ‘significant nexus’ to waters that are or were navigable in fact or that could reasonably be so made.” *Id.* at 759 (citing SWANCC, 531 U.S. at 167, 172). Justice Kennedy concluded that “The required nexus must be assessed in terms of the statute’s goals and purposes. Congress enacted the law to ‘restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,’ 33 U.S.C. 1251(a), and it pursued that objective by restricting dumping and filling in ‘navigable waters,’ §§1311(a), 1362(12).” *Id.* at 779. He concluded that wetlands possess the requisite significant nexus if the wetlands “either alone or in combination with similarly situated [wet]lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” 547 U.S. at 780. Justice Kennedy’s opinion notes that such a relationship with navigable waters must

be more than “speculative or insubstantial.” *Id.* at 780.

While Justice Kennedy’s opinion focused on adjacent wetlands in light of the facts of the cases before him, his opinion is clear that a significant nexus is the basis for jurisdiction to protect non-navigable waters and wetlands under the CWA (*id.* at 759), and there is no indication in his opinion that the analytical framework his opinion provides for determining significant nexus for adjacent wetlands is limited to adjacent wetlands. In addition, the four dissenting Justices in *Rapanos*, who would have affirmed the court of appeals’ application of the agencies’ regulation, also concluded that the term “waters of the United States” encompasses, *inter alia*, all tributaries and wetlands that satisfy “either the plurality’s [standard] or Justice Kennedy’s.” *Id.* at 810 & n.14 (Stevens, J., dissenting). Neither the plurality nor the Kennedy opinion invalidated any of the current regulatory provisions defining “waters of the United States.”

Chief Justice Roberts’ concurrence in *Rapanos* emphasized that “[a]gencies delegated rulemaking authority under a statute such as the Clean Water Act are afforded generous leeway by the courts in interpreting the statute they are entrusted to administer.” *Id.* at 758. Chief Justice Roberts made clear that, if the agencies had undertaken such a rulemaking, “the Corps and the EPA would have enjoyed plenty of room to operate in developing some notion of an outer bound to the reach of their authority.” *Id.* (Emphasis in original.)

The agencies utilize the significant nexus standard, as articulated by Justice Kennedy’s opinion and informed by the unanimous opinion in *Riverside Bayview* and the plurality opinion in *Rapanos* which all recognize that the Act and the agencies must identify the scope of CWA jurisdiction “on this continuum to find the limit of ‘waters,’” *Riverside Bayview* at 132, to interpret the scope of the statutory term “waters of the United States.” While a significant nexus determination is primarily weighted in the scientific evidence and criteria, the agencies also consider the statutory language, the statute’s goals, objectives and policies, the case law, and the agencies’ technical expertise and experience when interpreting the terms of the CWA.

B. Science Report

EPA’s Office of Research and Development prepared the Science Report, a peer-reviewed compilation and analysis of published peer-reviewed scientific literature summarizing the current scientific understanding of the

connectivity of and mechanisms by which streams and wetlands, singly or in combination, affect the chemical, physical, and biological integrity of downstream waters. The final Science Report is available in the docket and at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=296414>.

The process for developing the Science Report followed standard information quality guidelines for EPA. In September 2013, EPA released a draft of the Science Report for an independent SAB review and invited submissions of public comments for consideration by the SAB panel. In October 2014, after several public meetings and hearings, the SAB completed its peer review of the draft Science Report. The SAB was highly supportive of the draft Science Report's conclusions regarding streams, riparian and floodplain wetlands, and open waters, and recommended strengthening the conclusion regarding non-floodplain waters to include a more definitive statement that reflects how numerous functions of such waters sustain the integrity of downstream waters.⁷ The final peer review report is available on the SAB Web site, as well as in the docket for this rulemaking. EPA revised the draft Science Report based on comments from the public and recommendations from the SAB panel.

The SAB was established in 1978 by the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), to provide independent scientific and technical advice to the EPA Administrator on the technical basis for Agency positions and regulations. Advisory functions include peer review of EPA's technical documents, such as the Science Report. At the time the peer review was completed, the chartered SAB was comprised of more than 50 members from a variety of sectors including academia, non-profit organizations, foundations, state governments, consulting firms, and industry. To conduct the peer review, EPA's SAB staff formed an ad hoc panel based on nominations from the public to serve as the primary reviewers. The panel consisted of 27 technical experts in an array of relevant fields, including hydrology, wetland and stream ecology, biology, geomorphology, biogeochemistry, and freshwater science. Similar to the chartered SAB, the panel members represented sectors

including academia, a federal government agency, non-profit organizations, and consulting firms. The chair of the panel was a member of the chartered SAB.

The SAB process is open and transparent, consistent with the Federal Advisory Committee Act, 5 U.S.C., App 2, and agency policies regarding Federal advisory committees. Consequently, the SAB has an approved charter, which must be renewed biennially, announces its meetings in the **Federal Register**, and provides opportunities for public comment on issues before the Board. The SAB staff announced via the **Federal Register** that they sought public nominations of technical experts to serve on the expert panel: SAB Panel for the Review of the EPA Water Body Connectivity Report (via a similar process the public also is invited to nominate chartered SAB members). 78 FR 15012 (Mar. 8, 2013). The SAB staff then invited the public to comment on the list of candidates for the panel. Once the panel was selected, the SAB staff posted a memo on its Web site addressing the formation of the panel and the set of determinations that were necessary for its formation (e.g., no conflicts of interest). In the public notice of the first public meetings interested members of the public were invited to submit relevant comments for the SAB Panel to consider pertaining to the review materials, including the charge to the Panel. Over 133,000 public comments were received by the Docket. Every meeting was open to the public, noticed in the **Federal Register**, and had time allotted for the public to present their views. In total, the Panel held a two-day in-person meeting in Washington, DC, in December 2013, and three four-hour public teleconferences in April, May, and June 2014. The SAB Panel also compiled four draft versions of its peer review report to inform and assist the meeting deliberations that were posted on the SAB Web site. In September 2014, the chartered SAB conducted a public teleconference to conduct the quality review of the Panel's final draft peer review report. The peer review report was approved at that meeting, and revisions were made to reflect the chartered SAB's review. The culmination of that public process was the release of the final peer review report in October 2014. All meeting minutes and draft reports are available on the SAB Web site for public access.

The final Science Report states that connectivity is a foundational concept in hydrology and freshwater ecology. Connectivity is the degree to which components of a system are joined, or connected, by various transport

mechanisms and is determined by the characteristics of both the physical landscape and the biota of the specific system. Connectivity for purposes of interpreting the scope of "waters of the United States" under the CWA serves to demonstrate the "nexus" between upstream water bodies and the downstream traditional navigable water, interstate water, or the territorial sea. The scientific literature does not use the term "significant" as it is defined in a legal context, but it does provide information on the strength of the effects on the chemical, physical, and biological functioning of the downstream water bodies from the connections among covered tributaries, covered adjacent waters, and case-specific waters and those downstream waters. The scientific literature also does not use the terms traditional navigable waters, interstate waters, or the territorial seas. However, evidence of strong chemical, physical, and biological connections to larger rivers, estuaries, and lakes applies to that subset of rivers, estuaries, and lakes that are traditional navigable waters, interstate waters, or the territorial seas.

The Science Report presents evidence of those connections from various categories of waters, evaluated singly or in combination, which affect downstream waters and the strength of that effect. The objectives of the Science Report are (1) to provide a context for considering the evidence of connections between downstream waters and their tributary waters, and (2) to summarize current understanding about these connections, the factors that influence them, and the mechanisms by which the connections affect the function or condition of downstream waters. The connections and mechanisms discussed in the Science Report include transport of physical materials and chemicals such as water, wood, sediment, nutrients, pesticides, and mercury; functions that covered adjacent waters perform, such as storing and cleansing water; movement of organisms or their seeds and eggs; and hydrologic and biogeochemical interactions occurring in and among surface and groundwater flows, including hyporheic zones⁸ and alluvial aquifers.

The Science Report presents five major conclusions:

⁸ The hyporheic zone is the subsurface area immediately below the bed of intermittent and ephemeral streams that remains wet even when there is no surface flow. These areas are extremely important to macro-benthic organisms critical to the bio-chemical integrity of streams.

⁷ U.S. EPA. 2014. SAB review of the draft EPA report *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. EPA-SAB-15-001, U.S. Environmental Protection Agency, Washington, DC. ("SAB 2014a.")

Conclusion 1: Streams

The scientific literature unequivocally demonstrates that streams, individually or cumulatively, exert a strong influence on the chemical, physical, and biological integrity of downstream waters. All tributary streams, including perennial, intermittent, and ephemeral streams, are chemically, physically, and biologically connected to downstream rivers via channels and associated alluvial deposits where water and other materials are concentrated, mixed, transformed, and transported. Streams are the dominant source of water in most rivers, and the majority of tributaries are perennial, intermittent, or ephemeral headwater streams. Headwater streams also convey water into local storage compartments such as ponds, shallow aquifers, and floodplains, and into regional and alluvial aquifers; these local storage compartments are important sources of water for maintaining baseflow in rivers. In addition to water, streams transport sediment, wood, organic matter, nutrients, chemical contaminants, and many of the organisms found in rivers. The scientific literature provides robust evidence that streams are biologically connected to downstream waters by the dispersal and migration of aquatic and semiaquatic organisms, including fish, amphibians, plants, microorganisms, and invertebrates, that use both upstream and downstream habitats during one or more stages of their life cycles, or provide food resources to downstream communities. In addition to material transport and biological connectivity, ephemeral, intermittent, and perennial flows influence fundamental biogeochemical processes by connecting channels and shallow groundwater with other landscape elements. Chemical, physical, and biological connections between streams and downstream waters interact via integrative processes such as nutrient spiraling. This occurs when stream communities assimilate and chemically transform large quantities of nitrogen and other nutrients that otherwise would be transported directly downstream, thereby increasing nutrient loads and associated impairments due to excess nutrients in downstream waters. Science Report at ES–2.

Conclusion 2: Riparian/Floodplain Wetlands and Open Waters

The scientific literature clearly shows that wetlands and open waters in riparian areas and floodplains are chemically, physically, and biologically integrated with rivers via functions that improve downstream water quality,

including the temporary storage and deposition of channel-forming sediment and woody debris, temporary storage of local groundwater that supports baseflow in rivers, and transformation and transport of stored organic matter. Riparian/floodplain wetlands and open waters improve water quality through the assimilation, transformation, and sequestration of pollutants, including excess nutrients and chemical contaminants such as pesticides and metals that can degrade downstream water integrity. In addition to providing effective buffers to protect downstream waters from point source and nonpoint source pollution, these systems form integral components of river food webs, providing nursery habitat for breeding fish and amphibians, colonization opportunities for stream invertebrates, and maturation habitat for stream insects. Lateral expansion and contraction of the river in its floodplain result in an exchange of organic matter and organisms, including fish populations that are adapted to use floodplain habitats for feeding and spawning during high water, that are critical to river ecosystem function. Riparian/floodplain wetlands and open waters also affect the integrity of downstream waters by subsequently releasing (desynchronizing) floodwaters and retaining large volumes of stormwater, sediment, and contaminants in runoff that could otherwise negatively affect the condition or function of downstream waters. Science Report at ES–2 to ES–3.

Conclusion 3: Non-Floodplain Wetlands and Open Waters

Wetlands and open waters in non-floodplain landscape settings (“non-floodplain wetlands”) provide numerous functions that benefit downstream water integrity. These functions include storage of floodwater; recharge of groundwater that sustains river baseflow; retention and transformation of nutrients, metals, and pesticides; export of organisms or seeds to downstream waters; and habitats needed for stream species. This diverse group of wetlands (e.g., many Prairie potholes or vernal pools) can be connected to downstream waters through surface water, shallow subsurface water, and groundwater flows, and through biological and chemical connections.

In general, connectivity of non-floodplain wetlands occurs along a gradient, and can be described in terms of the frequency, duration, magnitude, timing, and rate of change of water, material, and biotic fluxes to

downstream waters. These descriptors are influenced by climate, geology, and terrain, which interact with factors such as the magnitudes of the various functions within wetlands (e.g., amount of water storage or carbon export) and their proximity to downstream waters to determine where wetlands occur along the connectivity gradient. At one end of this gradient, the functions of non-floodplain wetlands clearly affect the condition of downstream waters if a visible (e.g., channelized) surface water or a regular shallow subsurface-water connection to the river network is present. For non-floodplain wetlands lacking a channelized surface or regular shallow subsurface connection (*i.e.*, those at intermediate points along the gradient of connectivity), generalizations about their specific effects on downstream waters from the available literature are difficult because information on both function and connectivity is needed. Science Report at ES–3.

Conclusion 4: Degrees and Determinants of Connectivity

Connectivity of streams and wetlands to downstream waters occurs along a gradient that can be described in terms of the frequency, duration, magnitude, timing, and rate of change of water, material, and biotic fluxes to downstream waters. These terms, which we refer to collectively as connectivity descriptors, characterize the range over which streams and wetlands vary and shift along the connectivity gradient in response to changes in natural and anthropogenic factors and, when considered in a watershed context, can be used to predict probable effects of different degrees of connectivity over time. The evidence unequivocally demonstrates that the stream channels and riparian/floodplain wetlands or open waters that together form river networks are clearly connected to downstream waters in ways that profoundly influence downstream water integrity. The connectivity and effects of non-floodplain wetlands and open waters are more variable and thus more difficult to address solely from evidence available in peer-reviewed studies. Science Report at ES–3 to ES–4.

Conclusion 5: Cumulative Effects

The incremental effects of individual streams and wetlands are cumulative across entire watersheds, and therefore, must be evaluated in context with other streams and wetlands. Downstream waters are the time-integrated result of all waters contributing to them. For example, the amount of water or biomass contributed by a specific

ephemeral stream in a given year might be small, but the aggregate contribution of that stream over multiple years, or by all ephemeral streams draining that watershed in a given year or over multiple years, can have substantial consequences on the integrity of the downstream waters. Similarly, the downstream effect of a single event, such as pollutant discharge into a single stream or wetland, might be negligible but the cumulative effect of multiple discharges could degrade the integrity of downstream waters.

When considering the effect of an individual stream or wetland, all contributions and functions of that stream or wetland should be evaluated cumulatively. For example, the same stream transports water, removes excess nutrients, transports pollutants, mitigates flooding, and provides refuge for fish when conditions downstream are unfavorable; if any of these functions is ignored, the overall effect of that stream would be underestimated. Science Report at ES-5 to ES-6.

SAB Review of the Proposed Rule

In addition to its peer review of the draft Science Report, in a separate effort the SAB also reviewed the adequacy of the scientific and technical basis of the proposed rule and provided its advice and comments on the proposal in September 2014.⁹ The same SAB Panel that reviewed the draft Science Report met via two public teleconferences in August 2014 to discuss the scientific and technical basis of the proposed rule. The Panel submitted comments to the Chair of the chartered SAB. A work group of chartered SAB members considered comments provided by panel members, agency representatives, and the public on the adequacy of the science informing the rule. This work group then led the September 2014 public teleconference discussion of the chartered SAB. The public had an opportunity to submit oral or written comments during these two public meetings. The SAB's final letter to the EPA Administrator can be found on the SAB Web site and in the docket for this rule.

The SAB found that the available science provides an adequate scientific basis for the key components of the proposed rule. The SAB noted that although water bodies differ in degree of connectivity that affects the extent of

influence they exert on downstream waters (*i.e.*, they exist on a "connectivity gradient"), the available science supports the conclusion that the types of water bodies identified as "waters of the United States" in the proposed rule exert strong influence on the chemical, physical, and biological integrity of downstream waters. In particular, the SAB expressed support for the proposed rule's inclusion of tributaries and "adjacent waters" as categorical waters of the United States and the inclusion of "other waters" on a case-specific basis, though noting that certain "other waters" can be determined as a subcategory to be similarly situated.

Regarding tributaries, the SAB found, "[t]here is strong scientific evidence to support the EPA's proposal to include all tributaries within the jurisdiction of the Clean Water Act. Tributaries, as a group, exert strong influence on the physical, chemical, and biological integrity of downstream waters, even though the degree of connectivity is a function of variation in the frequency, duration, magnitude, predictability, and consequences of physical, chemical, and biological processes." The Board advised EPA to reconsider the definition of tributaries because not all tributaries have ordinary high water marks (*e.g.*, ephemeral streams with arid and semi-arid environments or in low gradient landscapes where the flow of water is unlikely to cause an ordinary high water mark). The SAB also advised EPA to consider changing the wording in the definition to "bed, bank, and other evidence of flow." SAB 2014b at 2. The agencies did not make this change because this recommendation seemed to suggest that any hydrologic connection is sufficient for CWA jurisdiction. The definition of "tributary" in the rule better identifies tributaries that have a significant nexus to downstream traditional navigable waters, interstate waters, or the territorial seas. In addition, the SAB suggested that EPA reconsider whether flow-through lentic systems should be included as "adjacent waters" and wetlands, rather than as tributaries.

Regarding "adjacent waters" and wetlands, the SAB stated, "[t]he available science supports the EPA's proposal to include 'adjacent waters' and wetlands as a waters of the United States. . . . because [they] have a strong influence on the physical, chemical, and biological integrity of navigable waters." *Id.* In particular, the SAB noted, "the available science supports defining adjacency or determination of adjacency on the basis of functional relationships," rather than "solely on

the basis of geographical proximity or distance to jurisdictional waters." *Id.* at 2-3. The agencies have determined which waters are adjacent, and thus jurisdictional under the rule, based on both functional relationships and proximity because those factors identify the waters that have a strong influence on the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. Section C. and IV.F below. The agencies' determination is informed by the science, and consideration of proximity is reasonable in interpreting the scope of adjacency.

In the evaluation of "other waters," the SAB found that "scientific literature has established that 'other waters' can influence downstream waters, particularly when considered in aggregate." *Id.* at 3. The SAB thus found it "appropriate to define 'other waters' as waters of the United States on a case-by-case basis, either alone or in combination with similarly situated waters in the same region." *Id.* The SAB found that distance could not be the sole indicator used to evaluate the connection of "other waters" to jurisdictional waters. The agencies' identification of the areas within which a water is assessed on a case-specific basis for a significant nexus is informed by the science and the agencies' experience and technical expertise, and consideration of proximity is reasonable in interpreting the scope of the statute. The SAB also expressed support for language in one of the options discussed in the preamble to the proposed rule. Specifically, the SAB stated there is "also adequate scientific evidence to support a determination that certain subcategories and types of 'other waters' in particular regions of the United States (*e.g.*, Carolina and Delmarva Bays, Texas coastal prairie wetlands, prairie potholes, pocosins, western vernal pools) are similarly situated (*i.e.*, they have a similar influence on the chemical, physical, and biological integrity of downstream waters and are similarly situated on the landscape) and thus could be considered waters of the United States." *Id.* The Board noted that other sets of wetlands could be identified as "similarly situated" as the science continues to develop and that science does not support excluding groups of "other waters" or subcategories thereof from jurisdiction.

The exclusions paragraph of the proposed rule generated the most comments from the SAB. The SAB noted, "[t]he Clean Water Act exclusions of groundwater and certain other exclusions listed in the proposed rule and the current regulation do not

⁹ U.S. EPA. 2014. SAB Consideration of the Adequacy of the Scientific and Technical Basis of the EPA's Proposed Rule titled "Definition of Waters of the United States under the Clean Water Act." EPA-SAB-14-007, U.S. Environmental Protection Agency, Washington, DC. ("SAB 2014b.")

have scientific justification.” *Id.* With regard to ditches, the Board found that there is a lack of scientific knowledge to determine whether ditches should be categorically excluded. For example, some ditches that would be excluded in the Midwest may drain Cowardin wetlands and may provide certain ecosystem services, while gullies, rills, and non-wetland swales can be important conduits for moving water between jurisdictional waters. The SAB also noted that artificial lakes or ponds, or reflection pools, can be directly connected to jurisdictional waters via either shallow or deep groundwater. The SAB also recommended that the agencies clarify in the preamble to the final rule that “significant nexus” is a legal term, not a scientific one.

C. Significant Nexus Conclusions

As noted earlier, the agencies interpret the scope of “waters of the United States” protected under the CWA based on the information and conclusions in the Science Report, other relevant scientific literature, the Technical Support Document that provides additional legal and scientific discussion for issues raised in this rule, the relevant Supreme Court decisions, the agencies’ technical expertise and experience, and the objectives and requirements of the CWA. In light of this information, the agencies made scientifically and technically informed judgments about the nexus between the relevant waters and the significance of that nexus and conclude that “tributaries” and “adjacent waters,” each as defined by the rule, have a significant nexus such that they are “waters of the United States” and no additional analysis is required. The agencies also determined that additional waters may, on a case-specific basis, have a significant nexus to traditional navigable waters, interstate waters, and the territorial seas, either alone or in combination with similarly situated waters. The agencies’ interpretation of the scope of “waters of the United States” is informed by the Science Report and the review and comments of the SAB. The rule reflects the judgment of the agencies in balancing the science, the agencies’ expertise, and the regulatory goals of providing clarity to the public while protecting the environment and public health, consistent with the law.

Since the *Rapanos* decision, the agencies have gained extensive experience making significant nexus determinations, and that experience and expertise has informed the judgment of the agencies as reflected in the provisions of the rule. The agencies,

most often the Corps, have made more than 400,000 CWA jurisdictional determinations since 2008. Of those, more than 120,000 are case-specific significant nexus determinations. The agencies made determinations in every state in the country, from the arid West to the tropics of Hawaii, from the Appalachian Mountains in the East to the lush forests of the Northwest. With field staff located in 38 Corps District offices and 10 EPA regional offices, the agencies have almost a decade of nationwide experience in making significant nexus determinations. These individual jurisdictional determinations have been made for waters ranging from an intermittent stream that provides flow to a drinking water source, to a group of floodplain wetlands in North Dakota that provide important protection from floodwaters to downstream communities alongside the Red River, to headwater mountain streams that provide high quality water that supplies baseflow and reduces the harmful concentrations of pollutants in the main part of the river below. Through this experience, the agencies developed wide-ranging technical expertise in assessing the hydrologic flowpaths along which water and materials are transported and transformed that determine the degree of chemical, physical, or biological connectivity, as well as the variations in climate, geology, and terrain within and among watersheds and over time that affect the functions (such as the removal or transformation of pollutants) performed by streams and wetlands for downstream traditional navigable waters, interstate waters or the territorial seas.

The agencies utilize many tools and many sources of information to help make jurisdictional determinations, including U.S. Geological Survey (USGS) and state and local topographic maps, aerial photography, soil surveys, watershed studies, scientific literature and references, and field work. For example, USGS and state and local stream maps and datasets, aerial photography, gage data, watershed assessments, monitoring data, and field observations are often used to help assess the contributions of flow of tributary streams, including intermittent and ephemeral streams, to downstream traditional navigable waters, interstate waters or the territorial seas. Similarly, floodplain and topographic maps of federal, state and local agencies, modeling tools, and field observations can be used to assess how wetlands are trapping floodwaters that might otherwise affect downstream waters.

Further, the agencies utilize the large body of scientific literature regarding the functions of tributaries, including tributaries with ephemeral, intermittent and perennial flow and of wetlands and open waters to inform their evaluations of significant nexus. In addition, the agencies have experience and expertise for decades prior to and since the *SWANCC* and *Rapanos* decisions with making jurisdictional determinations, and consider hydrology, ordinary high water mark, biota, and other technical factors in implementing Clean Water Act programs. This immersion in the science along with the practical expertise developed through case-specific determinations across the country and in diverse settings is reflected in the agencies’ conclusions with respect to waters that have a significant nexus, as well as where the agencies have drawn boundaries demarking where “waters of the United States” end.

1. Scope of Significant Nexus Analysis

Under the significant nexus standard, waters possess the requisite significant nexus if they “either alone or in combination with similarly situated [wet]lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” *Rapanos* at 780. Several terms in this standard were not defined. In this rule the agencies interpret these terms and the scope of “waters of the United States” based on the goals, objectives, and policies of the statute, the scientific literature, the Supreme Court opinions, and the agencies’ technical expertise and experience. Therefore, for purposes of a significant nexus analysis, the agencies have determined (1) which waters are “similarly situated,” and thus should be analyzed in combination, in (2) the “region,” for purposes of a significant nexus analysis, and (3) the types of functions that should be analyzed to determine if waters significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. These determinations underpin many of the key elements of the rule and are reflected in the definition of “significant nexus” in the rule.

a. Similarly Situated Waters

As reflected in the rule’s definition of “significant nexus,” the agencies determined that it is reasonable to consider waters as “similarly situated” where they function alike and are sufficiently close to function together in affecting the nearest traditional

navigable water, interstate water, or the territorial sea. Since the focus of the significant nexus standard is on protecting and restoring the chemical, physical, and biological integrity of the nation's waters, the agencies interpret the phrase "similarly situated" in terms of whether particular waters are providing common, or similar, functions for downstream waters such that it is reasonable to consider their effect together. Regarding covered tributaries and covered adjacent waters, the agencies define each water type such that the functions provided are similar and the waters are situated so as to provide those functions together to affect downstream waters.

The science demonstrates that covered tributaries provide many common vital functions important to the chemical, physical, and biological integrity of downstream waters, regardless of the size of the tributaries. The science also supports the conclusion that sufficient volume, duration, and frequency of flow are required to create a bed and banks and ordinary high water mark. The science also supports the conclusion that tributaries function together to affect downstream waters. The agencies conclude that covered tributaries with a bed and banks and ordinary high water mark are similarly situated for purposes of the agencies' significant nexus analysis.

For covered adjacent waters, the science demonstrates that these waters provide many similar vital functions to downstream waters, and the agencies defined "adjacent waters" with distance boundaries to ensure that the waters are providing similar functions to downstream waters and that the waters are located comparably in the region such that the agencies' reasonably judged them to be similarly situated.

For waters for which a case-specific significant nexus determination is required the agencies have determined that some waters in specific regions are similarly situated; for other specified waters, the determination of whether there are any other waters providing similar functions in a similar situation in the region must be made as part of a case-specific determination. See section IV.H.

Assessing the functions of identified waters in combination is consistent not only with Justice Kennedy's significant nexus standard, but with the science. Scientists routinely combine the effects of groups of waters, aggregating the known effect of one water with those of ecologically similar waters in a specific geographic area, or to a certain scale. This is because the chemical, physical,

and biological integrity of downstream waters is directly related to the aggregate contribution of upstream waters that flow into them, including any tributaries and connected wetlands. As a result, the scientific literature and the Science Report consistently document that the health of larger downstream waters is directly related to the aggregate health of waters located upstream, including waters such as wetlands that may not be hydrologically connected but function together to ameliorate the potential impacts of flooding and pollutant contamination from affecting downstream waters. See Technical Support Document.

For example, excess nutrients discharged into small tributary streams in the aggregate can cause algal blooms downstream that reduce dissolved oxygen levels and increase turbidity in traditional navigable waters, interstate waters, and the territorial seas. Water low in dissolved oxygen cannot support aquatic life. This widely-recognized phenomenon, known as hypoxia, has impacted commercial and recreational fisheries in the northern Gulf of Mexico. In this instance, the cumulative effects of nutrient export from the many small headwater streams of the Mississippi River have resulted in large-scale ecological and economically harmful impacts hundreds of miles downstream. See Technical Support Document.

In review of the scientific and technical adequacy of the rule, the SAB panel members "generally agreed that aggregating 'similarly situated' waters is scientifically justified, given that the combined effects of these waters on downstream waters are often only measurable in aggregate."¹⁰ As stated in section III.B. above, one of the main conclusions of the Science Report is that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed. For example, the Science Report finds, "[t]he amount of nutrients removed by any one stream over multiple years or by all headwater streams in a watershed in a given year can have substantial consequences for downstream waters." Science Report at 1–11. Cumulative effects of streams, wetlands, and open waters across a watershed must be considered because

"[t]he downstream consequences (e.g., the amount and quality of materials that eventually reach a river) are determined by the aggregate effect of contributions and sequential alterations that begin at the source waters and function along continuous flowpaths to the watershed outlet." *Id.* at 1–19.

The agencies conclude that it is appropriate to assess the effects of waters in combination based on the similarity of the functions they provide to the downstream water and their location in the watershed. This is consistent with the science and effectively meets the goals of the CWA.

b. In the Region

Since Justice Kennedy did not define the "region," the agencies determined that the single point of entry watershed is a reasonable and technically appropriate scale for identifying "in the region" for purposes of the significant nexus standard. A single point of entry watershed is the drainage basin within whose boundaries all precipitation ultimately flows to the nearest single traditional navigable water, interstate water, or the territorial sea. The agencies determined that because the movement of water from watershed drainage basins to coastal waters, river networks, and lakes shapes the development and function of these systems in a way that is critical to their long-term health, the watershed is a reasonable and technically appropriate way to identify the scope of waters that together may have an effect on the chemical, physical, or biological integrity of a particular traditional navigable water, interstate water, or territorial sea. The watershed includes all streams, wetlands, lakes, and open waters within its boundaries. Using the watershed that flows to the nearest single traditional navigable water, interstate water, or territorial sea is consistent with court decisions that these waters are the ultimate focus of CWA protections. Using the single point of entry watershed ensures that any analysis of significant nexus is appropriately connected to these touchstone waters.

Because the movement of water from watershed drainage basins to coastal waters, river networks, and lakes shapes the development and function of these systems in a way that is critical to their integrity, using a watershed as the framework for conducting significant nexus evaluations is scientifically supportable. Watersheds are generally regarded as the most appropriate spatial unit for water resource management. Anthropogenic actions and natural events can have widespread effects within the watershed that collectively

¹⁰ September 2, 2014. Memorandum from Dr. Amanda Rodewald to Dr. David Allen. Comments to the chartered SAB on the Adequacy of the Scientific and Technical Basis of the EPA's Proposed Rule titled "Definition of 'Waters of the United States' under the Clean Water Act." ("SAB 2014c.")

impact the integrity and quality of the relevant traditional navigable water, interstate water, or the territorial sea. The functions of the contributing waters are inextricably linked and have a cumulative effect on the integrity of the downstream traditional navigable water, interstate water, or the territorial sea. For these reasons, it is more appropriate to conduct a significant nexus analysis at the watershed scale than to focus on a specific site, such as an individual stream segment. See proposal Appendix A, Scientific Analysis, 79 FR 22246, April 21, 2014, Science Report, and Technical Support Document.

Concluding that the watershed is the reasonable and appropriate region for purposes of a significant nexus analysis is also consistent with the agencies' longstanding practice and experience. To restore or maintain the health of the downstream affected water, the agencies' standard practice is to evaluate the condition of the waters that are in the contributing watersheds and to develop a plan to address the issues of concern. The Corps has used watershed framework approaches for water sources, for navigation approaches for more than 100 years, and in the regulatory program since its inception. Also, using a watershed framework is consistent with more than two decades of practice by EPA and many other governmental, academic, and additional entities that recognize that a watershed approach is the most effective framework to address water resource challenges. Finally, the watershed that drains to the nearest (*i.e.*, first downstream) traditional navigable water, interstate water, or the territorial seas is likely to be of a size commonly understood as a "region."

In light of the scientific literature, the longstanding approach of the agencies' implementation of the CWA, and the statutory goals underpinning Justice Kennedy's significant nexus framework, the watershed draining to the nearest traditional navigable water, interstate water, or the territorial sea, is the appropriate "region" for a significant nexus analysis. See the proposed rule preamble and Technical Support Document.

c. Significantly Affect Chemical, Physical, or Biological Integrity

The agencies' definition of the term "significant nexus" in the rule is consistent with language in *Riverside Bayview*, *SWANCC*, and *Rapanos*, and with the goals, objectives, and policies of the CWA. The definition reflects that not all waters have a requisite connection to traditional navigable waters, interstate waters, or the

territorial seas sufficient to be determined jurisdictional. Justice Kennedy was clear that to be covered, waters must significantly affect the chemical, physical, or biological integrity of a downstream navigable water and that the requisite nexus must be more than "speculative or insubstantial," *Rapanos*, at 780. The agencies define significant nexus in precisely those terms. Under the rule a "significant nexus" is established by a showing of a significant chemical, physical, or biological effect. In characterizing the significant nexus standard, Justice Kennedy stated: "[t]he required nexus must be assessed in terms of the statute's goals and purposes. Congress enacted the [CWA] to 'restore and maintain the chemical, physical, and biological integrity of the Nation's waters'" 547 U.S. at 779. It is clear that Congress intended the CWA to "restore and maintain" all three forms of "integrity," Section 101(a), so if any one is compromised then that is contrary to the statute's stated objective. It would subvert the objective if the CWA only protected waters upon a showing that they had effects on every attribute of the integrity of a traditional navigable water, interstate water, or the territorial sea.

In the rule's definition of "significant nexus," the agencies identify the functions that waters provide that can significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters and the territorial seas. In identifying the functions to be considered the agencies were informed by the goals of the statute and the available science. Among the means to achieve the CWA's objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, Congress established an interim national goal to achieve wherever possible "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." Section 101(a)(2). Functions to be considered for the purposes of determining significant nexus are sediment trapping; nutrient recycling; pollutant trapping, transformation, filtering, and transport; retention and attenuation of floodwaters; runoff storage; contribution of flow; export of organic matter; export of food resources; and provision of life-cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, and use as a nursery area) for species located in traditional navigable waters, interstate waters, or the territorial seas.

The effect of an upstream water can be significant even when a water, alone or in combination, is providing a subset, or even just one, of the functions listed.

Science demonstrates that these aquatic functions provided by smaller streams, ponds, wetlands and other waters are important for protecting the chemical, physical, and biological integrity of downstream traditional navigable waters, interstate waters, and the territorial seas. For example, States identify sediment and nutrients as the primary contaminants in the nation's waters. Sediment storage and export via streams to downstream waters is critical for maintaining the river network, including the formation of channel features. Although sediment is essential to river systems, excess sediment can impair ecological integrity by filling interstitial spaces, reducing channel capacity, blocking sunlight transmission through the water column, and increasing contaminant and nutrient concentrations. Streams and wetlands can prevent excess deposits of sediment downstream and reduce pollutant concentrations in downstream waters. Thus the function of trapping of excess sediment, along with export of sediment, have a significant effect on the chemical, physical, and biological integrity of downstream waters.

Nutrient recycling results in the uptake and transformation of large quantities of nitrogen and other nutrients that otherwise would be transported directly downstream, thereby decreasing nutrient loads and associated impairments due to excess nutrients in downstream waters. Streams, wetlands and open waters improve water quality through the assimilation, transformation, or sequestration of pollutants, including excess nutrients and chemical contaminants such as pesticides and metals that can degrade downstream water integrity. Nutrient transport exports nutrients downstream and can degrade water quality and lead to stream impairments. Nutrients are necessary to support aquatic life, but excess nutrients lead to excessive plant growth and hypoxia, in which over-enrichment causes dissolved oxygen concentrations to fall below the level necessary to sustain most aquatic animal life in the downstream waters. Nutrient recycling, retention, and export can significantly affect downstream chemical integrity by impacting downstream water quality.

The contribution of flow downstream is an important role, as upstream waters can be a cumulative source of the majority of the total mean annual flow to bigger downstream rivers and waters, including via the recharge of baseflow.

Streams, wetlands, and open waters contribute surface and subsurface water downstream, and are the dominant sources of water in most rivers. Contribution of flow can significantly affect the physical integrity of downstream waters, helping to sustain the volume of water in larger waters.

Small streams and wetlands are particularly effective at retaining and attenuating floodwaters. By subsequently releasing (desynchronizing) floodwaters and retaining large volumes of stormwater that could otherwise negatively affect the condition or function of downstream waters, streams and adjacent wetlands and open waters affect the physical integrity of downstream traditional navigable waters, interstate waters, or the territorial seas. This function can reduce flood peaks downstream and can also maintain downstream river baseflows by recharging alluvial aquifers.

Streams, wetlands, and open waters supply downstream waters with dissolved and particulate organic matter (e.g., leaves, wood), which support biological activity throughout the river network. In addition to organic matter, streams, wetlands, and open waters can also export other food resources downstream, such as aquatic insects that are the food source for fish in downstream waters. The export of organic matter and food resources downstream is important to maintaining the food webs and thus the biological integrity of traditional navigable waters, interstate waters, and the territorial seas.

Streams, wetlands, and open waters provide life-cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, and use as a nursery area) for species located in traditional navigable waters, interstate waters, or the territorial seas. Many species require different habitats for different resources (e.g., food, spawning habitat, overwintering habitat), and thus move throughout the river network over their life-cycles. For example, headwater streams can provide refuge habitat under adverse conditions, enabling fish to persist and recolonize downstream areas once conditions have improved. These upstream systems form integral components of downstream food webs, providing nursery habitat for breeding fish and amphibians, colonization opportunities for stream invertebrates, and maturation habitat for stream insects, including for species that are critical to downstream ecosystem function. The provision of life-cycle dependent aquatic habitat for species located in downstream waters

significantly affects the biological integrity of those downstream waters.

Tributaries, adjacent wetlands, and open waters can perform multiple functions, including functions that change depending upon the season. For example, the same stream can contribute flow when evapotranspiration is low and can retain water when evapotranspiration is high. These functions, particularly when considered in aggregate with the functions of similarly situated waters in the region, can significantly affect the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas. When considering the effect of an individual stream, wetland, or open water, all contributions and functions that the water provides should be evaluated cumulatively. For example, the same wetland retains sediment, removes excess nutrients, mitigates flooding, and provides habitat for amphibians that also live downstream; if any of these functions is ignored, the overall effect of that wetland would be underestimated. It is important to note, however, that a water or wetland can provide just one function that may significantly affect the chemical, physical or biological integrity of the downstream water.

2. Categories of Waters Determined to Have a Significant Nexus

In this rule, the agencies determine that: (1) Covered tributaries, in combination with other covered tributaries located in a watershed that drains to a traditional navigable water, interstate water, or the territorial seas, significantly affect the chemical, physical, and biological integrity of that water; and (2) covered adjacent waters, in combination with other covered adjacent waters located in a watershed that drains to a traditional navigable water, interstate water, or the territorial seas, significantly affect the chemical, physical, and biological integrity of that water.

a. Covered Tributaries

The agencies determine based on their scientific and technical expertise that waters meeting the definition of “tributary” in a single point of entry watershed are similarly situated and have a significant nexus because they significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, and the territorial seas. As such, it is appropriate to conclude covered tributaries as a category are “waters of the United States.” See Technical Support Document. The agencies

limited the tributaries that are “waters of the United States” to those that have both a bed and banks and another indicator of ordinary high water mark. That limitation served as a reasonable basis to consider covered tributaries similarly situated because those physical characteristics indicated sufficient flow that the covered tributaries are performing similar functions and located such that they are working together in the region to provide those functions to the nearest traditional navigable water, interstate water, or the territorial seas. Justice Kennedy noted that the requirement of a perceptible ordinary high water mark for tributaries, a measure that had been used by the Corps, “may well provide a reasonable measure of whether specific minor tributaries bear a sufficient nexus with other regulated waters to constitute ‘navigable waters’ under the Act.” 547 U.S. at 781, *see also id.* at 761. The science supports this.

The agencies analyzed the Science Report and other scientific literature to determine whether tributaries to traditional navigable waters, interstate waters, or the territorial seas have a significant nexus to constitute “waters of the United States” under the Act such that it is reasonable to assert CWA jurisdiction over all such tributaries by rule. Covered tributaries have a significant impact on the chemical, physical, or biological integrity of waters into which they eventually flow—for CWA purposes, traditional navigable waters, interstate waters, and the territorial seas. The great majority of covered tributaries are headwater streams, and whether they are perennial, intermittent, or ephemeral, they play an important role in the transport of water, sediments, organic matter, nutrients, and organisms to downstream waters. Covered tributaries serve to store water, thereby reducing flooding; provide biogeochemical functions that help maintain water quality; trap and transport sediments; transport, store and modify pollutants; provide habitat for plants and animals; and sustain the biological productivity of downstream rivers, lakes, and estuaries. Such waters have these significant effects whether they are natural, modified, or constructed.

Covered tributaries significantly affect the chemical integrity of traditional navigable waters, interstate waters, and the territorial seas. Covered tributaries influence the chemical composition of downstream waters, through the transport and removal of chemical elements and compounds, such as nutrients, ions, organic matter and pollutants. Ecosystem processes in

covered tributaries transform, remove, and transport these substances to downstream waters. In turn, these chemical compounds can influence water quality, sediment deposition, nutrient availability, and biotic functions in rivers. Because water flow transports chemical substances downstream, chemical effects are closely related to hydrological connectivity. Within covered tributaries, there are processes that occur that transform and export nutrients and carbon to downstream waters, serving important source functions that influence the chemical integrity of downstream waters. Organic carbon, in both dissolved and particulate forms, exported from covered tributaries is consumed by downstream organisms. The organic carbon that is exported downstream thus supports biological activity throughout the river network.

Covered tributaries act as both sinks and sources of chemical substances, further affecting the chemical integrity of traditional navigable waters, interstate waters, and the territorial seas. Covered tributaries provide sink functions by trapping chemicals through absorption to sediments in the stream substrate (e.g., phosphorous adsorption to clay particles). They provide source functions by transporting chemicals to downstream traditional navigable waters, interstate waters, and the territorial seas as chemicals dissolved in the waters or as chemicals attached to suspended sediments.

Covered tributaries significantly affect the physical integrity of traditional navigable waters, interstate waters, and the territorial seas. Physical connections between covered tributaries and traditional navigable waters, interstate waters, and the territorial seas result from the hydrologic transport from covered tributaries to downstream waters of numerous materials, including water, sediment and organic matter such as leaves and wood. This transport affects the physical characteristics of downstream waters. Covered tributaries, even when seasonally dry, are the dominant source of water in most rivers, rather than direct precipitation or groundwater input to main stem river segments. One of the primary functions of covered tributaries is transporting sediment to downstream waters. Covered tributaries, particularly headwaters, shape and maintain river channels by accumulating and gradually or episodically releasing sediment and large woody debris into river channels. These effects occur even when the covered tributaries flow infrequently (such as ephemeral covered tributaries), and even when the covered tributaries

are great distances from the traditional navigable water, interstate water, or the territorial sea (such as some headwater covered tributaries).

Covered tributaries significantly affect the biological integrity of traditional navigable waters, interstate waters, and the territorial seas. Covered tributaries, including intermittent and ephemeral streams, are critical in the life-cycles of many organisms capable of moving throughout river networks. In fact, many organisms, such as anadromous salmon, have complex life-cycles which involve migration through the river network, from headwaters to downstream rivers and oceans and back, over the course of their lives. In addition to providing critical habitat for complex life-cycle completion, covered tributaries provide refuge from predators and adverse physical conditions in rivers, and are reservoirs of genetic- and species-level diversity. Covered tributaries contribute materials to downstream food networks and supporting populations for aquatic species, including economically important species such as salmon. These effects occur even when the covered tributaries flow infrequently (such as ephemeral covered tributaries), and even when the covered tributaries are large distances from the traditional navigable waters, interstate waters, and the territorial seas (such as some headwater covered tributaries).

Similarly, modified and constructed tributaries perform the same functions as natural tributaries, especially the conveyance of water that carries nutrients, pollutants, and other constituents, both good and bad, to traditional navigable waters, interstate waters, and the territorial seas. Modified and constructed covered tributaries also provide corridors for movement of organisms between headwaters and traditional navigable waters, interstate waters, and the territorial seas. The important effect—and thus the significant nexus—between a covered tributary and a traditional navigable water, interstate water, and the territorial sea is not broken where the covered tributary flows through a culvert or other structure. The scientific literature recognizes that features that convey water, whether they are natural, modified, or constructed, provide substantial connectivity between streams and downstream waters. For example, ditches that meet the definition of tributary and are not excluded quickly move water downstream to traditional navigable waters, interstate waters, and the territorial seas due to their often straightened and channelized nature,

transporting downstream sediment, nutrients, and other materials.

The CWA regulates and controls pollution at its source, in part because most pollutants do not remain at the site of the discharge, but instead flow and are washed downstream through the tributary system to endanger drinking water supplies, fisheries, and recreation areas. These fundamental facts about the movement of pollutants and the interconnected nature of the tributary system demonstrate why covered tributaries of traditional navigable waters, interstate waters, and the territorial seas, alone or in combination with other covered tributaries in a watershed, have a significant nexus with those downstream waters. Thus, in the rule the agencies assert CWA jurisdiction over all covered tributaries as defined. Those covered tributaries are “waters of the United States” without the need for further analysis.

b. Covered Adjacent Waters

Based on the agencies’ review of the scientific literature and the law, the agencies determine that covered adjacent waters, as defined, have a significant nexus and are “waters of the United States.” The scientific literature, including the Science Report, consistently supports the conclusion that covered adjacent waters provide similar functions and work together to maintain the chemical, physical, and biological integrity of the downstream traditional navigable waters, interstate waters, and the territorial seas because of their hydrological and ecological connections to, and interactions with, those waters. Science demonstrates that this functional connectivity is particularly evident where covered adjacent waters are located within the floodplain of the traditional navigable water, interstate water, the territorial seas, covered tributary, or impoundment to which they are adjacent or are otherwise sufficiently proximate to waters with no floodplain, such as lakes and ponds. Location within the floodplain and proximity ensure that the aquatic functions performed by covered adjacent waters are effectively and consistently provided to downstream waters. See Technical Support Document.

The agencies conclude that all waters meeting the definition of “adjacent” in the rule are similarly situated for purposes of analyzing whether they have a significant nexus to a traditional navigable water, interstate water, or the territorial sea. Based on a review of the scientific literature, the agencies conclude that these bordering, contiguous, or neighboring waters

provide similar functions and function together to significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. Further, because the definition of "adjacent" considers both the functional relationships and the proximity of the waters (*i.e.*, those that are located near traditional navigable waters, interstate waters, the territorial seas, impoundments, and covered tributaries), interpreting the term "similarly situated" to include all covered adjacent waters, as defined in the rule, is informed by the science and is a reasonable interpretation of the scope of the statute. The geographic proximity of an "adjacent" water relative to the traditional navigable waters, interstate waters, the territorial seas, impoundments, and covered tributaries is indicative of the relationship to it, with many of its defining characteristics resulting from the movement of materials and energy between the categories of waters. The scientific literature supports that waters, including wetlands, ponds, lakes, oxbow lakes, and similar waters, that are "adjacent," as defined in the rule, to traditional navigable waters, interstate waters, the territorial seas, impoundments, and covered tributaries, are integral parts of stream networks because of their ecological functions and how they interact with each other, and with downstream traditional navigable waters, interstate waters, or the territorial seas.

Covered adjacent waters function together to maintain the chemical, physical, or biological health of traditional navigable waters, interstate waters, and the territorial seas to which they are directly adjacent or to which they are connected by the tributary system. This functional interaction can result from hydrologic connections or because covered adjacent waters can act as water storage areas holding damaging floodwaters or filtering harmful pollutants. These chemical, physical, and biological connections affect the integrity of downstream traditional navigable waters, interstate waters, and the territorial seas through the temporary storage and deposition of channel-forming sediment and woody debris, temporary storage of local groundwater sources of baseflow for downstream waters and their tributaries, and transformation and transport of organic matter. Covered adjacent waters improve water quality through the assimilation, transformation, or sequestration of pollutants, including excess nitrogen and phosphorus, and

chemical contaminants such as pesticides and metals that can degrade downstream water integrity. In addition to providing effective buffers to protect downstream waters from pollution, covered adjacent waters form integral components of downstream food webs, providing nursery habitat for breeding fish and amphibians, colonization opportunities for stream invertebrates, and maturation habitat for stream insects. Covered adjacent waters serve an important role in the integrity of traditional navigable waters, interstate waters, and the territorial seas by subsequently releasing (desynchronizing) floodwaters and retaining large volumes of stormwater, sediment, nutrients, and contaminants that could otherwise negatively impact the condition or function of traditional navigable waters, interstate waters, and the territorial seas.

Floodplain areas connect aquatic environments through both surface and shallow subsurface hydrologic flowpaths. Waters in these areas are therefore uniquely situated in watersheds to receive and process water that passes over densely vegetated areas and through subsurface zones before reaching streams and rivers. When contaminants reach a floodplain water, they can be sequestered in sediments, assimilated into wetland plants and animals, transformed into less harmful and/or mobile forms or compounds, or lost to the atmosphere. Wetlands located in floodplains store large amounts of sediment and organic matter from upstream and upland areas. In addition, the primary function of many floodplain wetlands in the Western United States is sediment exchange, which can transform materials and compounds temporarily on floodplains.

Wetlands and other similar waters in floodplain areas act as buffers that are among the most effective tools for mitigating nonpoint source pollution. The literature shows that collectively, wetlands and other similar waters improve water quality through assimilation, transformation, or sequestration of nutrients, sediment, and other pollutants—such as pesticides and metals—that can affect downstream water quality. These pollutants enter floodplain wetlands from dry and wet atmospheric deposition, runoff from upland agricultural and urban areas, spray drift, subsurface water flows, outfalls, pipes, and ditches.

Floodplain waters, including wetlands, can reduce flood peaks by storing and desynchronizing floodwaters. They can also maintain river baseflows by recharging alluvial aquifers. Many studies have

documented the ability of floodplain wetlands to reduce flood pulses by storing excess water from streams and rivers. One review of wetland studies reported that floodplain wetlands reduced or delayed floods in 23 of 28 studies. For example, peak discharges between upstream and downstream gaging stations on the Cache River in Arkansas were reduced 10–20 percent primarily due to floodplain water storage.

Ecosystem function within a river system is driven by interactions between the physical environment and the diverse biological communities living within the river system. Wetlands in floodplains become important seed sources for the river network, especially if catastrophic flooding scours vegetation and seed banks in other parts of the channel. Movements of organisms that connect aquatic habitats and their populations, even across different watersheds, are important for the survival of individuals, populations, and species, and for the functioning of the river ecosystem. For example, lateral expansion and contraction of the river in its floodplain results in an exchange of matter and organisms, including fish populations that are adapted to use floodplain habitat for feeding and spawning during high water. The organisms that live within the hyporheic zone for these mid- and large-sized river systems have a demonstrated connection outward to several miles within the floodplain. General field practice observations further indicate that covered adjacent waters with a close proximity have a significant nexus with the downstream waters.

Waters adjacent to impoundments and covered tributaries are integrally linked to the chemical, physical, and biological functions of the waters to which they are adjacent and, through those waters, are integrally linked to the chemical, physical, and biological functions of the downstream traditional navigable waters, interstate waters, or the territorial seas. Thus, where waters are adjacent to impoundments or covered tributaries, they also have a significant nexus to the downstream traditional navigable waters, interstate waters, or the territorial seas. The important functions that covered adjacent waters perform that impact downstream traditional navigable waters, interstate waters, and the territorial seas and their integrated behavior with the tributary system demonstrate why all waters adjacent to traditional navigable waters, interstate waters, or the territorial seas as well as impoundments and covered tributaries, alone or in combination with other

covered adjacent wetlands in a watershed have a significant nexus with those downstream waters.

Based on the science and their technical expertise and experience, the agencies determine it is appropriate to protect all covered adjacent waters because those waters are functioning as an integrated system with the downstream traditional navigable waters, interstate waters, or the territorial seas and significantly affect such downstream waters. Consequently, these waters are “adjacent” and therefore “waters of the United States” under the CWA. Covered adjacent waters are “waters of the United States” without the need for further analysis.

3. Case-Specific Significant Nexus Determinations

a. Two Exclusive Circumstances for Case-Specific Significant Nexus Determinations

The rule identifies two exclusive circumstances under which a significant nexus determination is made on a case-specific basis to determine whether the water is a “water of the United States.” First, there are five subcategories of waters—Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands—that the agencies conclude must be analyzed “in combination” as “similarly situated” waters when making a case-specific significant nexus analysis. Second, there are waters for which the agencies have made no conclusions with respect to which waters are “similarly situated” but for which a case-specific significant nexus analyses may be undertaken. The rule establishes that case-specific determinations may be made for waters located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, and for waters located within 4,000 feet from the high tide line or the ordinary high water mark of traditional navigable waters, interstate waters, the territorial seas, impoundments, or tributaries.

b. Summary of Rationale for “Similarly Situated” Determinations

Based on the agencies’ expertise and experience and available literature and data, the agencies have determined that waters in the five subcategories of waters identified in paragraph (a)(7) are similarly situated and must be combined with other waters in the same subcategory located in the same watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas. See Technical Support Document. The

scientific literature shows that these subcategories of waters are frequently located together in a complex or are otherwise closely co-located and perform similar functions. The agencies specifically sought comment in the proposal on options to address these five subcategories of waters, including whether waters in these subcategories should be found “similarly situated” by rule.

Based on the body of scientific literature regarding the subcategories of waters specified in paragraph (a)(7) and their functions, the agencies determined that waters of the specified subcategories are similarly situated because they perform similar functions and they are located sufficiently close to each other to function together in affecting downstream waters and therefore reasonably be evaluated in combination with regard to their effects on the integrity of traditional navigable waters, interstate waters, or the territorial seas. The specified subcategories of waters perform similar functions as waters of the same subcategory in the same single point of entry watershed and collectively function together to affect a traditional navigable water, interstate water, or the territorial seas. Among the functions and relationships in the landscape the agencies considered to conclude that the subcategories are each similarly situated are the physical capacity of the waters to provide flood and sediment retention. In determining that the waters in each of the five subcategories are “similarly situated,” the agencies concluded that these subcategories of waters are co-located to each other or similar to the tributary system such that they have cumulative and additive effects on pollutant removal through parallel, serial, or sequential processing, such as the role of pocosins in maintaining water quality in estuaries. The subcategories of waters are sufficiently near each other or the tributary system to function as an integrated habitat that can support the life-cycle of a species or more broadly provide habitat to a large number of a single species.

The SAB expressed support for the agencies’ option in the preamble of the proposed rule to identify certain subcategories of waters as similarly situated and highlighted these same five subcategories. It stated, “[t]here is also adequate scientific evidence to support a determination that certain subcategories and types of ‘other waters’ in particular regions of the United States (e.g., Carolina and Delmarva Bays, Texas coastal prairie wetlands, prairie potholes, pocosins, western vernal pools) are similarly situated (*i.e.*, they

have a similar influence on the physical, chemical and biological integrity of downstream waters and are similarly situated on the landscape) and thus could be considered waters of the United States. Furthermore, as the science continues to develop, other sets of wetlands may be identified as ‘similarly situated.’” SAB 2014b at 3.

The agencies concluded that the specific subcategories of waters listed in paragraph (a)(7) are similarly situated for purposes of a case-specific significant nexus based on the following:

(i) Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets that are found in the central United States and Canada. In the United States, they are found from central Iowa through western Minnesota, Montana, eastern South Dakota, and North Dakota. Prairie potholes demonstrate a wide range of hydrologic permanence; some hold permanent standing water and others are wet only in years with high precipitation. This in turn influences the diversity and structure of their biological communities.

Prairie potholes generally accumulate and retain water effectively due to the low permeability of their underlying soil, which can modulate flow characteristics of nearby streams and rivers. One of the most noted hydrologic functions of Prairie potholes is water storage. Because most of the water outflow in Prairie potholes is via evapotranspiration, Prairie potholes can become water sinks, preventing flow to downstream waters. Prairie potholes also can accumulate chemicals in overland flow, thereby reducing chemical loading to other bodies of water. When Prairie potholes are artificially connected to streams and lakes through drainage, they become sources of water and chemicals to downstream waters. Prairie potholes also support a community of highly mobile organisms, from plants to invertebrates that move among Prairie potholes and that can biologically connect the entire complex to the river network.

Prairie potholes can be highly connected to other Prairie potholes via shallow subsurface connections and via surface hydrologic connections during the wet season. They can also be connected to the stream network via surface and shallow subsurface connections. Intense precipitation events or high cumulative precipitation over one or more seasons can result in temporary hydrologic connectivity between Prairie potholes and from

Prairie potholes to the tributary system via "fill-and-spill" events.

Their density across the landscape varies from region to region as the result of several factors, including patterns of glacial movement, topography, and climate. In some parts of the region, prairie pothole density is very high. Though their density varies across the landscape, Prairie potholes often act as a complex. They have similar functions that can collectively impact downstream waters.

Prairie potholes have been determined to be similarly situated based on the characteristics of Prairie potholes, including their density on the landscape, their interaction and formation as a complex of wetlands and open waters, their connections to each other and the tributary network, and their similar functions. In addition, their chemical, physical, and biological connections to downstream waters and the strength of their effects on the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas support this determination that Prairie potholes are similarly situated by rule.

(ii) Carolina and Delmarva bays are ponded depressional wetlands that occur along the Atlantic coastal plain from northern Florida to New Jersey. Though Carolina and Delmarva bays are from the same category of wetland and perform similar functions, they are located in different parts of the Atlantic coastal plain and thus have unique names. Carolina bays are most abundant in North Carolina and South Carolina, while Carolina bays found in the Delmarva Peninsula are commonly referred to as Delmarva bays or Delmarva potholes.

Most bays receive water through precipitation, lose water through evapotranspiration, and lack natural surface outlets. Both mineral-based and peat-based bays have shown connections to shallow groundwater. Bays typically are in proximity to each other or to streams, providing for hydrologic connections to each other and to downstream waters in large rain events via overland flow or shallow subsurface connections. Some Delmarva bays have surface water connections to the Chesapeake Bay. In addition, human channeling and ditching of the bays are widespread and create surface connections to other waters, including the tributary system and estuaries. These ditches commonly connect the surface water of bays to other bays that are lower on the landscape, and ultimately, to streams.

The hydrology in bays allow for denitrification (chemical and biological processes that remove nitrogen from water), which can reduce the amount of nitrate in both groundwater and downstream surface waters. Because bays are frequently connected chemically to downstream waters through ditches, they can be sources of sediment and nutrients to downstream waters. Where they are not connected via confined surface connections, bays can act as sediment and nutrient sinks.

Fish are reported in bays that are known to dry out, indirectly demonstrating surficial connections. Amphibians and reptiles use bays extensively for breeding and for rearing young. These animals can disperse many feet on the landscape and can colonize, or serve as a food source to, downstream waters. Similarly, bays foster abundant insects that have the potential to become part of the downstream food chain. Humans have ditched and channelized a high percentage of bays, creating new surface connections to downstream waters and allowing transfer of nutrients, sediment, and other pollutants, such as methylmercury.

Carolina and Delmarva bays can occur in high density on the landscape and can act as a wetlands complex. Bays have similar functions to other bays and cumulatively these functions can impact downstream waters.

The agencies conclude that Carolina and Delmarva bays are similarly situated based on their close proximity to each other and the tributary network, their hydrologic connections to each other and the tributary network, their density on the landscape, and their similar functions.

(iii) The word pocosin comes from the Algonquin Native American word for "swamp on a hill," and these evergreen shrub and tree-dominated wetlands are found from Virginia to northern Florida, but mainly in North Carolina. Typically, there is no standing water present in these peat-accumulating wetlands, but a shallow water table leaves the soil saturated for much of the year. They range in size from less than an acre to several thousand acres. The slow movement of water through the dense organic matter in pocosins removes excess nutrients deposited by rainwater. The same organic matter also acidifies the water. This water is slowly released to downstream waters and estuaries, where it helps to maintain the proper salinity, nutrients, and acidity.

Because pocosins are the topographic high areas on the regional landscape, they serve as the source of water for downstream waters. Pocosins often have

seasonal connections to drainageways leading to estuaries or are adjoining other wetlands draining into perennial streams or estuaries. Other pocosins have been ditched and are directly connected to streams.

The agencies conclude that pocosins are similarly situated based on their close proximity to each other and the tributary network, their hydrologic connections to each other and the tributary network, their density on the landscape, and their similar functions.

(iv) Western vernal pools are shallow, seasonal wetlands that accumulate water during colder, wetter months and gradually dry up during warmer, drier months. Western vernal pools are seasonal wetlands from the Pacific Northwest to northern Baja California, Mexico associated with topographic depressions, soils with poor drainage, mild, wet winters and hot, dry summers. The agencies have determined that California vernal pools are "similarly situated."

Because their hydrology and ecology are so tightly coupled with the local and regional geological processes that formed them, western vernal pools in California typically occur within "vernal pool landscapes," or complexes of pools in which swales connect pools to each other and to seasonal streams. Some common findings about the hydrologic connectivity of western vernal pools include evidence for temporary or permanent outlets, frequent filling and spilling of higher pools into lower elevation swales and stream channels, and conditions supporting subsurface flows through pools without perched aquifers to nearby streams.

Non-glaciated vernal pools in western states are reservoirs of biodiversity and can be connected genetically to other locations and aquatic habitats through wind- and animal-mediated dispersal. Animals and other organisms can move between western vernal pool complexes and streams. Insects and zooplankton can be flushed from vernal pools into streams and other waters during periods of overflow, carried by animal vectors (including humans), or dispersed by wind.

The agencies conclude that western vernal pools in California are similarly situated based on their close proximity to each other and the tributary network, their interaction and arrangement as a complex of wetlands, their hydrologic connections to each other and the tributary network, their density on the landscape, and their similar functions.

(v) Along the Gulf of Mexico from western Louisiana to south Texas, freshwater wetlands occur as a mosaic

of depressions, ridges, intermound flats, and mima mounds. These coastal prairie wetlands were formed thousands of years ago by ancient rivers and bayous and once occupied almost a third of the landscape around Galveston Bay, Texas. The term Texas coastal prairie wetlands is not used uniformly in the scientific literature but encompasses Texas prairie pothole (freshwater depressional wetlands) and marsh wetlands that are described in some studies that occur on the Lissie and Beaumont Geological Formations, and the Ingleside Sand.

Texas coastal prairie wetlands are locally abundant and in close proximity to other coastal prairie wetlands and function together cumulatively. Collectively as a complex, Texas coastal prairie wetlands can be geographically and hydrologically connected to each other via swales and connected to downstream waters, contributing flow to those downstream waters. Cumulatively, these wetlands can control nutrient release levels and rates to downstream waters, as they capture, store, transform, and pulse releases of nutrients to those waters.

The agencies conclude that Texas coastal prairie wetlands are similarly situated based on their close proximity to each other and the tributary network, their hydrologic connections to each other and the tributary network, their interaction and formation as a complex of wetlands, their density on the landscape, and their similar functions.

IV. Definition of “Waters of the United States”

A. Summary of the Rule

The rule revises the existing definition of “waters of the United States” consistent with the CWA, science, the agencies’ technical expertise and experience, and Supreme Court decisions. The final rule establishes categories of waters that are jurisdictional and other categories of waters that are excluded, as well as categories of waters and wetlands that require a case-specific significant nexus evaluation to determine if they are “waters of the United States” and covered by the CWA. The rule also provides definitions for key terms used in the regulation. The final rule retains much of the structure of the agencies’ longstanding definition of “waters of the United States,” and many of the existing provisions of that definition where revisions are not required in light of Supreme Court decisions or other bases for revision. All existing exclusions from the definition of “waters of the United States” are retained, and several exclusions reflecting longstanding

agencies’ practice are added to the regulation for the first time.

The agencies define “waters of the United States” in paragraph (a) of the rule for all sections of the CWA to include the traditional navigable waters (a)(1), interstate waters (a)(2), the territorial seas (a)(3), impoundments of jurisdictional waters (a)(4), covered tributaries (a)(5), and covered adjacent waters (a)(6). Waters in these categories are jurisdictional “waters of the United States” by rule—no additional analysis is required. This eliminates the need to make a case-specific significant nexus determination for covered tributaries or covered adjacent waters because the agencies determined that these waters have a significant nexus to waters identified in (a)(1) through (a)(3) of the rule and thus are “waters of the United States.” The agencies emphasize that the finding of jurisdiction for these covered tributaries and covered adjacent waters was not based on the mere connection of a water body to downstream waters, but rather a determination that the nexus, alone or in combination with other of these covered tributaries or covered adjacent waters in the watershed, is significant.

The agencies exclude specified waters from the definition of “waters of the United States” in paragraph (b) of the rule. The rule makes no substantive change to the existing exclusion for waste treatment systems designed consistent with the requirements of the CWA and makes no change to the existing exclusion for prior converted cropland. The rule excludes for the first time certain waters and features over which the agencies have generally not asserted CWA jurisdiction, as well as groundwater, which the agencies have never interpreted to be a “water of the United States” under the CWA. Codifying these longstanding practices supports the agencies’ goals of providing greater clarity, certainty, and predictability for the regulated public and regulators, and makes rule implementation clear and practical.

This final rule provides clear exclusions for certain types of ditches. The final rule also expressly excludes stormwater control features created in dry land and certain wastewater recycling structures created in dry land. Waters and features that are excluded under paragraph (b) of the rule cannot be determined to be jurisdictional under any of the categories in the rule under paragraph (a).

In addition to waters that are categorically “waters of the United States” or categorically excluded under paragraphs (a) and (b), the rule identifies certain waters that can be

“waters of the United States” only where a case-specific determination has found a significant nexus between the water and traditional navigable waters, interstate waters, or the territorial seas. First, paragraph (a)(7) of the rule specifies five types of waters (Prairie potholes, Delmarva and Carolina bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands) that the agencies have determined to be “similarly situated,” and thus are to be considered in combination in a significant nexus analysis. Second, paragraph (a)(8) specifies that waters located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, and waters located within 4,000 feet from the high tide line or the ordinary high water mark of traditional navigable waters, interstate waters, the territorial seas, impoundments, or covered tributaries may be found to have a significant nexus on a case-specific basis, but the agencies have not made a determination that the waters are “similarly situated.” As a result, a significant nexus analysis for these waters will include a case-specific assessment of whether there are any similarly situated waters, as well as whether the water, alone or in combination with any waters determined to be similarly situated, has a significant nexus to a traditional navigable water, interstate water, or territorial sea. The rule outlines at (c)(5)(i)–(ix) functions relevant to these case-specific significant nexus analyses.

Paragraph (c) of the rule provides definitions for key terms used in the regulation. Some of these are unchanged from the current regulations, including the definitions for “wetlands” at (c)(4), “ordinary high water mark” at (c)(6) and “high tide line” at (c)(7), although the latter two are existing, unchanged Corps’ definitions added to EPA’s regulations for the first time. 33 CFR 328.3(d)–(e). The rule also defines for the first time “tributary” and “tributaries” at (c)(3), “neighboring” (an aspect of adjacency) at (c)(2), and “significant nexus” at (c)(5).

This rule is effective on August 28, 2015. Under existing Corps’ regulations and guidance, approved jurisdictional determinations generally are valid for five years. The agencies will not reopen existing approved jurisdictional determinations unless requested to do so by the applicant or, consistent with existing Corps’ guidance, unless new information warrants revision of the determination before the expiration period. Similarly, consistent with existing regulations and guidance, approved jurisdictional determinations

associated with issued permits and authorizations are valid until the expiration date of the permit or authorization.

As a general matter, the agencies' actions are governed by the rule in effect at the time the agency issues a jurisdictional determination or permit authorization, not by the date of a permit application, request for authorization, or request for a jurisdictional determination. However, any jurisdictional determinations issued prior to the effective date of the rule and jurisdictional determinations associated with permit applications deemed by the Corps to have been complete on the date this rule is published in the **Federal Register**, including complete pre-construction notifications, will be made consistent with the existing rule, unless the applicant requests that its approved jurisdictional determination or permit authorization be decided after the effective date of the new rule. Reliance on preliminary jurisdictional determinations is also not affected by the issuance of this rule. All other jurisdictional determinations and requests for authorization requiring an approved jurisdictional determination issued on or after the effective date of this rule will be made consistent with this rule.

It is important to emphasize that the agencies do not anticipate being able to complete new jurisdictional determinations submitted after this rule is published before it becomes effective. As a result, requesters seeking jurisdictional determinations after the rule is published should expect the determination will be made consistent with this rule. The agencies recognize there are a number of requests for permit applications and requests for jurisdictional determinations pending at any time. The agencies expect only a small portion of those pending actions will require additional information from or work by the requester. As described in the Economic Analysis, the vast majority of requests address streams and adjacent wetlands, and the agencies do not expect new information or work will be needed to complete those requests. If any additional information is needed to assess these requests, the agencies will work proactively with permit applicants to reduce potential short-term disruptions in the permit process that may be associated with the rule.

B. Traditional Navigable Waters

The existing regulations include within the definition of "waters of the United States" all waters that are currently used, or were used in the past, or may be susceptible to use in

interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. See, e.g., 33 CFR 328.3(a)(1); 40 CFR 230.3(s)(1); 40 CFR 122.2 ("waters of the U.S."). This paragraph of the regulation encompasses those waters that are often referred to as "traditional navigable waters." The rule does not make any changes to this paragraph of the regulation.

For purposes of CWA jurisdiction, waters will be considered traditional navigable waters, and jurisdictional under (a)(1) of the rule, if they:

- Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;
- Have been determined by a Federal court to be navigable-in-fact under Federal law;
- Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);
- Have historically been used for commercial navigation, including commercial waterborne recreation; or
- Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

See Technical Support Document; "U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook Appendix D, 'Traditional Navigable Waters,'" available at: http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/app_d_traditional_navigable_waters.pdf.

The agencies received several comments on the scope of traditional navigable waters. Some commenters observed that "traditional navigable waters" as a jurisdictional category is not based in science. Several commenters thought that the final rule should specify considerations to be taken into account when determining if a water is susceptible to being used in future commercial navigation. The agencies have not revised the regulation to address susceptibility, but observe that case law has provided a number of considerations and examples that are described further in the Technical Support Document and are reflected in longstanding agencies' practice.

C. Interstate Waters

The existing regulations define "waters of the United States" to include interstate waters, including interstate wetlands. The rule does not change that provision of the regulations. Therefore, interstate waters are "waters of the United States" even if they are not

navigable for purposes of Federal regulation under (a)(1) and do not connect to such waters. Moreover, the rule protects impoundments of interstate waters, tributaries to interstate waters, waters adjacent to interstate waters, and waters adjacent to covered tributaries of interstate waters because they have a significant nexus to interstate waters. Protection of these waters is thus critical to protecting interstate waters.

The language of the CWA indicates that Congress intended the term "navigable waters" to include interstate waters without imposing a requirement that they be traditional navigable waters themselves or be connected to traditional navigable waters. The precursor statutes to the CWA subjected interstate waters and their tributaries to Federal jurisdiction. The text of the CWA, specifically CWA section 303, which establishes ongoing requirements for interstate waters, in conjunction with the definition of navigable waters, provides clear indication of Congress' intent to protect interstate waters that were previously subject to Federal regulation. Other provisions of the statute provide additional textual evidence of the scope of the primary jurisdictional term of the CWA.

The agencies also have a longstanding regulatory interpretation that interstate waters fall within the scope of CWA jurisdiction. The agencies' interpretation was promulgated contemporaneously with the passage of the CWA and is consistent with the statutory and legislative history of the CWA. Furthermore, the Supreme Court has never addressed the CWA's coverage of interstate waters, and it is not reasonable to read its decisions in *SWANCC* and *Rapanos* to question the jurisdictional status of interstate waters or to impose additional jurisdictional requirements on interstate waters. The assertion of jurisdiction over interstate waters is based on the statute and under predecessor statutes where "interstate waters" were defined as all rivers, lakes, and other waters that flow across, or form a part of, state boundaries. Pub. L. 80-845, sec. 10, 62 Stat. 1155, at 1161 (1948). The agencies will continue to implement the provision consistent with the intent of Congress. For additional discussion of the agencies' interpretation of the CWA with respect to interstate waters, see Appendix B of the proposed rule and the Technical Support Document.

It is reasonable to assert jurisdiction over tributaries, adjacent waters, and waters that have a significant nexus to interstate waters consistent with the framework set forth in Justice Kennedy's

opinion in *Rapanos* for establishing jurisdiction over waters with a significant nexus to traditional navigable waters. Waters and wetlands with a significant nexus to traditional navigable waters and interstate waters have important beneficial effects on those waters, and by recognizing that polluting or destroying waters with a significant nexus can harm downstream jurisdictional waters. Traditional navigable waters and interstate waters cannot be protected without also protecting the waters that have a significant nexus to those waters as identified in the rule. The rule thus defines “waters of the United States” to include tributaries to interstate waters, waters adjacent to interstate waters, waters adjacent to tributaries of interstate waters, and other waters that have a significant nexus to interstate waters.

The agencies received a number of comments on interstate waters. Some commenters asserted that interstate waters required a significant nexus to a traditional navigable water in order to be jurisdictional after *Rapanos*. The agencies disagree for the reasons described above, in Appendix B to the proposed rule, and in the Technical Support Document.

D. Territorial Seas

The CWA and its existing regulations include “the territorial seas” as a “water of the United States.” The rule makes no changes to that provision of the regulation other than to change the ordering to earlier in the regulation. The CWA defines “navigable waters” to include “the territorial seas” at section 502(7). The CWA goes on to define the “territorial seas” in section 502(8) as “the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.” The territorial seas establish the seaward limit of “waters of the United States.” The territorial seas are clearly covered by the CWA (they are also traditional navigable waters), and it is reasonable to protect their covered tributaries and covered adjacent waters.

Although some comments addressed the definition of “territorial seas” provided in the CWA suggesting that the distance thresholds be revised to reflect other resource statutes, the agencies do not have authority to revise statutory language.

E. Impoundments

The existing regulations provide that impoundments of “waters of the United States” remain “waters of the United States,” and the rule does not make any changes to the existing regulatory language.

Impoundments are jurisdictional because an impoundment of a “water of the United States” remains a “water of the United States,” and because scientific literature demonstrates that impoundments continue to significantly affect the chemical, physical, or biological integrity of downstream traditional navigable waters, interstate waters, and the territorial seas. See Technical Support Document. The Supreme Court has confirmed that damming or impounding a “water of the United States” does not make the water non-jurisdictional. See *S. D. Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 379 n.5 (2006) (“[N]or can we agree that one can denationalize national waters by exerting private control over them.”). Similarly, when presented with a tributary to the Snake River which flows only about two months per year because of an irrigation diversion structure installed upstream, the Ninth Circuit noted “it is doubtful that a mere man-made diversion would have turned what was part of the waters of the United States into something else and, thus, eliminated it from national concern.” *U.S. v. Moses*, 496 F.3d 984, 988 (9th Cir. 2007), *cert. denied*, 554 U.S. 918 (2008). As a matter of policy and law, impoundments do not defederalize a water, even where there is no longer flow below the impoundment. The agencies have analyzed stream networks, above and below impoundments, for connection to downstream traditional navigable waters, interstate waters, or the territorial seas. Scientific literature, as well as the agencies’ scientific and technical expertise and experience confirm that impoundments have chemical, physical, and biological effects on downstream waters. See Technical Support Document.

The agencies also note that an impoundment of a water that is not a “water of the United States” can become jurisdictional if, for example, the impounded waters become navigable-in-fact and covered under paragraph (a)(1) of the rule.

By their nature, impoundments of jurisdictional waters would also often meet the definition of “adjacent waters,” as they are typically bordering or contiguous. Impoundments of “waters of the United States” are *per se* jurisdictional under paragraph (a)(4) of

the rule without the need to determine if they are also adjacent under paragraph (a)(6). However, as described in section IV.G below, “adjacent waters,” as defined, have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas, which bolsters the agencies’ determination that impoundments of “waters of the United States” remain “waters of the United States.”

Impoundments also may be one of the waters through which tributaries indirectly contribute flow to a traditional navigable water, interstate water, or territorial sea. As a matter of law and science, an impoundment does not cut off a connection between upstream tributaries and a downstream traditional navigable water, interstate water, or territorial sea, so covered tributaries above the impoundment are still considered a tributary to downstream traditional navigable waters, interstate waters, or the territorial seas even where the flow of water might be impeded due to the impoundment. See paragraph (a)(5).

The agencies received comments on impoundments, which generally explored the impacts of impoundments on connectivity to downstream waters. For the reasons described above and in the Technical Support Document, the agencies concluded that impoundments of “waters of the United States” remain “waters of the United States.”

F. Tributaries

The existing definition of “waters of the United States” regulates all tributaries without qualification. The final rule protects only waters that have a significant effect on the integrity of traditional navigable waters, interstate waters, or the territorial seas. The rule establishes a definition of “tributary,” and provides that a water meeting the definition of tributary, unless it is excluded under paragraph (b), is a “water of the United States” without the need for a separate case-specific significant nexus evaluation. As explained in Section III above, covered tributaries and the functions they provide, alone or in combination with other tributaries in the watershed, significantly affect the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, or the territorial seas. See also Technical Support Document. This section describes the provisions of the rule addressing tributaries and changes made to the provisions in the proposed rule based on public comments.

1. What are the provisions in the rule?

The rule defines “tributary” by emphasizing the physical characteristics created by sufficient volume, frequency and duration of flow, and that the water contributes flow, either directly or through another water, to a traditional navigable water, interstate water, or the territorial seas. This definition is based on the best available science, intent of the CWA, and case law, and is consistent with current practice. As mentioned above in Section III, the Science Report concludes that “[t]he scientific literature unequivocally demonstrates that streams, individually or cumulatively, exert a strong influence on the integrity of downstream waters.” Science Report at ES–2.

First, to meet the rule’s definition of “tributary,” a water must flow directly or through another water or waters to a traditional navigable water, interstate water, or the territorial seas. Waters through which a tributary may contribute flow indirectly include, for example, impoundments, wetlands, lakes, and other tributaries. A tributary may contribute flow through any number of downstream waters, including non-jurisdictional features, such as a ditch excluded under paragraph (b) of the rule, and jurisdictional waters that are not tributaries, such as an adjacent wetland—but it must be part of a tributary system that eventually flows to a traditional navigable water, an interstate water, or the territorial seas. This limitation on what constitutes a tributary for purposes of this rule is fundamental. If a water is not part of the tributary system of a traditional navigable water, interstate water, or the territorial seas, it does not meet the definition of “tributary” and is not jurisdictional under this provision of the rule. For example, an intermittent stream that exists wholly within one state, is not itself a traditional navigable water, and whose flows eventually ends without connecting to a traditional navigable water, interstate water, or the territorial seas is not a “water of the United States” as a “tributary” for purposes of this rule. To determine whether a water meets this aspect of the definition, the connection can be traced using direct observation, U.S. Geological Survey (USGS) data, stream datasets such as the National Hydrography Dataset, aerial photography or other reliable remote sensing information, or other appropriate information.

Under the rule, flow in the tributary may be perennial, intermittent, or ephemeral. The agencies received comments suggesting that the final rule

provide definitions for the terms ephemeral flow, intermittent flow, and perennial flow. The agencies considered the request and determined that there was no need to include a definition since they are commonly used scientific terms. Longstanding agencies’ practice considers perennial streams as those with flowing water year-round during a typical year, with groundwater or contributions of flow from higher in the stream or river network as primary sources of water for stream flow. Intermittent streams are those that have both precipitation and groundwater providing part of the stream’s flow, and flow continuously only during certain times of the year (e.g., during certain seasons such as the rainy season). Ephemeral streams have flowing water only in response to precipitation events in a typical year, and are always above the water table. Precipitation can include rainfall as well as snowmelt. Science shows that tributaries regardless of flow duration are very effective at transporting pollutants downstream, such as excess nutrients and sediment, which impact the integrity and character of traditional navigable waters, interstate waters, and the territorial seas. See Technical Support Document.

Second, the rule requires two physical indicators of flow: There must be a bed and banks and an indicator of ordinary high water mark. This definition of “tributary” includes only those waters the agencies have concluded are the type of waters that the CWA was intended to protect and which either individually or in combination with other covered tributaries in the watershed have a significant nexus to a traditional navigable water, interstate water, or the territorial seas. Thus, the agencies are not defining “waters of the United States” to include all streams that might be considered “tributaries” in the general scientific literature. To provide additional clarity and for ease of use for the public, the agencies are including the Corps’ existing definition of ordinary high water mark in EPA’s regulations as well. Under that existing Corps regulation, ordinary high water mark indicators include characteristics such as shelving, scour, changes in soil characteristics, and destruction of terrestrial vegetation, among others.

A bed and banks and other indicators of ordinary high water mark are physical indicators of water flow and are only created by sufficient and regular intervals of flow. These physical indicators can be created by perennial, intermittent, and ephemeral flows. See Technical Support Document. For purposes of the rule, “bed and banks”

means the substrate and sides of a channel between which flow is confined. The banks constitute a break in slope between the edge of the bed and the surrounding terrain, and may vary from steep to gradual. Existing Corps regulations define ordinary high water mark as the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the banks, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. 33 CFR 328.3(e). That definition is not changed by the rule and is added to EPA’s regulations.

Current Corps regulations and guidance identify bed and banks as indicators of the ordinary high water mark. The definition of “tributary” in this rule requires the presence of a bed and banks and an additional indicator of ordinary high water mark such as staining, debris deposits, or other indicator identified in the rule or agency guidance. In many tributaries, the bed is that part of the channel below the ordinary high water mark, and the banks often extend above the ordinary high water mark. For other tributaries, such as those that are incised, changes in vegetation, changes in sediment characteristics, staining, or other ordinary high water mark indicators may be found within the banks. In concrete-lined channels, the concrete acts as the bed and banks and can have other ordinary high water mark indicators such as staining and debris deposits. Indicators of an ordinary high water mark may vary from region to region across the country. See Technical Support Document.

Other evidence, besides direct field observation, may establish the presence of bed and banks and another indicator of ordinary high water mark. The agencies currently use many tools in identifying tributaries and will continue to rely on their experience and expertise in identifying the presence of a bed and banks and ordinary high water mark. For example, several reliable, well-established remote sensing sources of information or mapping can assist to establish the presence of water that contributes flow to a traditional navigable water, interstate water, or the territorial seas and provide evidence regarding the presence of a bed and banks and another indicator of ordinary high water mark. Among the types of remote sensing or mapping information that can assist in establishing the presence of water are USGS topographic

data, the USGS National Hydrography Dataset (NHD), Natural Resources Conservation Service (NRCS) Soil Surveys, and State or local stream maps, as well as the analysis of aerial photographs, and light detection and ranging (also known as LIDAR) data, and desktop tools that provide for the hydrologic estimation of a discharge sufficient to create an ordinary high water mark, such as a regional regression analysis or hydrologic modeling. These sources of information can sometimes be used independently to infer the presence of a bed and banks and another indicator of ordinary high water mark, or where they correlate, can be used to reasonably conclude the presence of a bed and banks and ordinary high water mark.

Both the USGS topographic data and the NHD data assist to delineate tributaries to traditional navigable waters, interstate waters, or the territorial seas. Where one or both of these sources have indicated a "blue line stream," there is an indication that the tributary could exhibit a bed and banks and another indicator of ordinary high water mark. Where this information is combined with stream order,¹¹ more certainty can result. For example, a water that is a second-order stream will be more likely to exhibit a bed and banks and another indicator of ordinary high water mark as compared to a first-order stream. This information will vary in validity in different parts of the country, so care will be taken to evaluate additional information prior to reasonably concluding a bed and banks or other indicators of ordinary high water mark are associated with the stream. This will be particularly true for first-order streams and for many streams in the arid portions of the country. Supporting information that can be used to conclude the presence of a bed and banks and another indicator of ordinary high water mark would be the presence of USGS stream data on the NRCS county Soil Survey or local stream maps which are mapped independently of the USGS, aerial photography interpretation, or digital terrain depictions created from LIDAR. See Technical Support Document.

Tributaries are observable in aerial photography by their topographic expression, characteristic linear and

curvilinear patterns, dark photographic tones, and the presence and pattern of riparian vegetation. The characteristic linear and curvilinear patterns and dark photographic tones observed on aerial photography can be caused by shadow cast from the banks of an incised stream or from water in the stream channel itself. In some cases stream channel morphology is visible, providing evidence of scour, materials sorting, and deposition, all characteristics of an ordinary high water mark. Visible persistent water (e.g., multiple dates of aerial photography showing visible water) provides strong evidence of the sufficient frequency and duration of surface flow to create a bed and banks and other indicators of ordinary high water mark. Visible indicators of running water such as rapids, riffles, and pools all indicate the presence of a bed and banks and other indicators of ordinary high water mark. Other physical characteristics of an ordinary high water mark that may be visible on aerial photography include the destruction of terrestrial vegetation and the absence of vegetation in a channel. These indicators gleaned from aerial photography interpretation can be correlated with the presence of USGS streams data in reasonably concluding that a bed and banks and another indicator of ordinary high water mark are present. See Technical Support Document.

Additional desktop tools can assist in the identification of bed and banks and other indicators of ordinary high water mark. For instance, field staff use other methods for estimating ordinary high water mark, including, but not limited to, lake and stream gage data, flood predictions, historic records of water flow, and statistical evidence. Some desktop tools, such as a regional regression analysis and the Hydrologic Modeling System (HEC-HMS), provide for the hydrologic estimation of stream discharge sufficient to create an ordinary high water mark in tributaries under regional conditions. Such desktop tools are particularly useful for identifying presence of bed and banks and another indicator of ordinary high water mark when supported by additional remote sensing tools that indicate the presence of such physical features.

LIDAR is a powerful tool to analyze the characteristics of the land surface, including tributary identification and characterization. LIDAR data are becoming more and more widespread for engineering and land use planning purposes. Where LIDAR data have been processed to create a bare earth model, detailed depictions of the land surface

are available. Bare earth models reveal subtle elevation changes and can clearly show a tributary's bed and banks and channel morphology. In many cases LIDAR can help delineate tributaries that would exhibit a bed and banks and another indicator of an ordinary high water mark in greater detail than aerial photography interpretation alone can. Visible linear and curvilinear incisions on a bare earth model are strong evidence that a tributary with a bed and banks and another indicator of an ordinary high water mark is present. LIDAR-indicated tributaries can be correlated with aerial photography interpretation and USGS stream data, to reasonably conclude the presence of a bed and banks and another indicator of an ordinary high water mark in the absence of a field visit. See Technical Support Document. The agencies have been using such remote sensing and desktop tools to delineate tributaries for many years where data from the field are unavailable or a field visit is not possible.

In addition, such desktop tools are critical in circumstances where physical characteristics of bed and banks and another indicator of ordinary high water mark are absent in the field, often due to unpermitted alteration of streams. In such cases where physical characteristics of bed and banks and another indicator of ordinary high water mark no longer exist, they may be determined by using other appropriate means that consider the characteristics of the surrounding areas. Such reliable methods that can indicate prior existence of bed and banks and other indicators of ordinary high water mark include, but are not limited to, lake and stream gage data, elevation data, spillway height, historic water flow records, flood predictions, statistical evidence, the use of reference conditions, or through the remote sensing and desktop tools described above.

The upper limit of the tributary is the point where a bed and banks and another indicator of ordinary high water mark cease to be identifiable. The ordinary high water mark establishes the lateral limits of a water, and its absence generally determines when a tributary's channel or bed and banks has ended, representing the upper limit of the tributary. However, a natural or constructed break in bed and banks or other indicator of ordinary high water mark does not constitute the upper limit of a tributary where bed and banks or other indicator ordinary high water mark can be found farther upstream. Note that waters, including wetlands, which are adjacent to a tributary at the

¹¹ Stream order is a method for stream classification based on relative position within a river network, when streams lacking upstream tributaries (i.e., headwater streams) are first-order streams and the junction of two streams of the same order results in an increase in stream order (i.e., two first-order streams join to form a second-order stream, and so on). When streams of different orders join, the order of the larger stream is retained. See Science Report and Technical Support Document.

upper limit of the channel are jurisdictional as “adjacent waters.”

The definition of “tributary” includes tributaries that flow directly or indirectly through impoundments that are jurisdictional under paragraph (a)(4) of the rule. Tributaries to impoundments of “waters of the United States” are jurisdictional for the same reasons the impoundments themselves are jurisdictional. As discussed in section IV. E., under case law, an impoundment of a “water of the United States” remains a “water of the United States,” and scientific literature demonstrates that impoundments continue to significantly affect the chemical, physical, or biological integrity of downstream waters traditional navigable waters, interstate waters, and the territorial seas. Therefore, tributaries to such impoundments continue to have a significant nexus, alone or in combination with other covered tributaries in the watershed, to the downstream traditional navigable water, interstate water, or the territorial seas.

Waters that meet the rule definition of tributary remain tributaries even if there is a manmade or natural break at some point along the connection to the traditional navigable water, interstate water, or the territorial seas. In many tributaries, there are often natural or constructed breaks in the presence of a bed and banks or ordinary high water mark while hydrologic connectivity remains. For example, in some regions of the country where there is a very low gradient, the banks of a tributary may be very low or may even disappear at times. Many tributaries lose their ordinary high water mark when adjacent wetlands are contiguous with the stream channel. The definition of “tributary” addresses these circumstances and states that waters that meet the definition of tributary remain tributaries even if such breaks occur, so long as bed and banks and an ordinary high water mark are present upstream of the break. Under the rule, when a covered tributary flows through a wetland into another tributary (sometimes called a “run-of-stream” wetland), the covered tributary remains jurisdictional even though it lost its ordinary high water mark through the wetland. By looking to the presence of a bed and banks and an ordinary high water mark upstream, the rule ensures that a mere break in the ordinary high water mark does not render tributaries with a significant nexus to downstream waters not jurisdictional. Other breaks that do not sever jurisdiction include constructed breaks such as bridges, culverts, pipes, dams, or waste treatment systems, or

natural breaks such as debris piles, boulder fields, or a stream that flows underground so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. Site specific conditions will continue to determine the distance up valley that needs to be evaluated to see if the break in bed and banks and ordinary high water mark is temporary or the start of the stream system.

The rule also clarifies that a water meets the definition of tributary if the water contributes flow through an excluded feature such as a ditch with ephemeral flow. While the water above and below the excluded feature is jurisdictional if it meets the definition of tributary, the excluded feature does not become jurisdictional. A water also continues to meet the definition of tributary if at some point the water contributes flow through a jurisdictional water that is not a tributary, such as an adjacent wetland or impoundment.

The agencies’ longstanding interpretation of the CWA has included tributaries that are natural, modified, or constructed waters. While this rule at paragraph (b) excludes specific types of constructed waters from jurisdiction, it continues to interpret constructed tributaries as jurisdictional unless expressly excluded in paragraph (b). Natural, modified, and constructed tributaries provide many of the same functions, especially as conduits for the movement of water and pollutants to other tributaries or directly to traditional navigable waters, interstate waters, or the territorial seas. The discharge of a pollutant into a tributary generally has the same effect downstream whether the tributary waterway is natural, modified, or constructed. See discussion in section III.C. above and the Technical Support Document. Given the extensive human modification of watercourses and hydrologic systems throughout the country, it is often difficult to distinguish between natural watercourses and watercourses that are wholly or partly modified or constructed. For example, tributaries that have been channelized in concrete or otherwise have been modified may still meet the definition of tributaries under the rule so long as they have bed and banks and an ordinary high water mark, contribute flow to a traditional navigable water, interstate water, or the territorial seas, and are not excluded under paragraph (b). The important consideration for a modified or constructed water is whether it meets the definition of “tributary” and is not excluded under paragraph (b).

Ditches are one important example of constructed features that in many instances can meet the definition of tributary. Ditches are jurisdictional under the rule only if they both meet the definition of “tributary” and are not excluded under paragraph (b)(3) in the rule. Not all ditches meet the definition of a tributary, and others—as discussed in Section I—are expressly excluded from jurisdiction.

Ditches protected by the rule must meet the definition of tributary, having a bed and banks and ordinary high water mark, and contributing flow directly or indirectly through another water to a traditional navigable water, interstate water, or the territorial seas. Jurisdictional ditches include ditches such as the following:

- Ditches with perennial flow,
 - Ditches with intermittent flow that are a relocated tributary, or are excavated in a tributary, or drain wetlands,
 - Ditches, regardless of flow, that are excavated in or relocate a tributary.
- The definition of tributary includes natural, undisturbed waters and those that have been man-altered or constructed, but which science shows function as a tributary. In addition, alteration or modification of natural streams and rivers for purposes such as flood control, erosion control, and other reasons does not convert the tributary to a ditch. A stream or river that has been channelized or straightened because its natural sinuosity has been altered, cutting off the meanders, is not a ditch. A stream that has banks stabilized through use of concrete or rip-rap (e.g., rocks or stones) is not a ditch. The Los Angeles River, for example, is a “water of the United States” (and, indeed, a traditional navigable water) and remains a “water of the United States” and is not excluded under paragraph (b)(3) even where it has been ditched, channelized, or concreted.

A ditch that relocates a stream is not an excluded ditch under paragraph (b)(3), and a stream is relocated either when at least a portion of its original channel has been physically moved, or when the majority of its flow has been redirected. A ditch that is a relocated stream is distinguishable from a ditch that withdraws water from a stream without changing the stream’s aquatic character. The latter type of ditch is excluded from jurisdiction where it meets the listed characteristics of excluded ditches under paragraph (b)(3). Agency staff can determine historical presence of tributaries using a variety of resources, such as historical maps, historic aerial photographs, local surface water management plans, street

maintenance data, wetlands and conservation programs and plans, as well as functional assessments and monitoring efforts. A ditch with intermittent flow that drains a wetland and otherwise meets the definition of “tributary” is a “tributary” and is not excluded under paragraph (b)(3). See IV.I. below.

Evidence, such as current or historic photographs, prior delineations, or USGS, state and local topographic maps, may be used to determine whether a ditch is an excluded ditch. Site characteristics may also be present to inform the determination of whether the water body is a ditch, such as shape, sinuosity, flow indications, etc., as ditches are often created in a linear fashion with little sinuosity and may or may not connect to another “water of the United States.”

2. What changes did the Agencies make from the proposed rule based on public comments?

The rule’s definition of “tributary” retains many elements from the proposed rule, but reflects public comments in several important ways. In particular, the rule emphasizes flow. The rule defines “tributary” by emphasizing physical characteristics created by water flow and requiring that the water contributes flow, either directly or through another water, to a traditional navigable water, interstate water, or the territorial seas. The rule also is clearer regarding the jurisdictional status of certain ditches, and clarifies that wetlands and waters such as ponds and lakes that contribute flow to a traditional navigable water, interstate water, or the territorial seas but typically lack a bed and banks and ordinary high water mark are considered “adjacent” but not a “tributary.”

A number of commenters suggested that the agencies should exclude ephemeral streams from the definition of tributary, expressing concern that ephemeral waters that flow very rarely would be considered a jurisdictional tributary. The rule definition of “tributary” requires that flow must be of sufficient volume, frequency, and duration to create the physical characteristics of bed and banks and an ordinary high water mark. If a water lacks sufficient flow to create such characteristics, it is not considered a “tributary” under this rule. While some commenters expressed concern that a feature that flowed very rarely could meet the proposed definition of “tributary,” it is the agencies’ judgment that such a feature is not a tributary under the rule because it would not

form the physical indicators required under the definitions of “ordinary high water mark” and “tributary.”

The rule includes ephemeral streams that meet the definition of tributary as “waters of the United States” because the agencies determined that such streams provide important functions for downstream waters, and in combination with other covered tributaries in a watershed significantly affect the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, and the territorial seas. As noted by the SAB, and consistent with the scientific literature, tributaries as a group exert strong influence on the chemical, physical, and biological integrity of downstream waters, even though the degree of connectivity is a function of variation in the frequency, duration, magnitude, predictability, and consequences of chemical, physical, and biological processes. See, e.g., SAB 2014b. These significant effects on traditional navigable waters, interstate waters, and the territorial seas occur even when the tributary is small, intermittent, or ephemeral.

In addition, the Science Report concludes that, “[a]lthough less abundant, the available evidence for connectivity and downstream effects of ephemeral streams was strong and compelling, particularly in context with the large body of evidence supporting the physical connectivity and cumulative effects of channelized flows that form and maintain stream networks.” Science Report at 6–13. For example, ephemeral headwater streams shape river channels in traditional navigable or interstate waters by accumulating and gradually or episodically releasing stored materials such as sediment and large woody debris. These materials help structure traditional navigable and interstate river channels by slowing the flow of water through channels and providing substrate and habitat for aquatic organisms.

Moreover, the agencies have historically considered ephemeral tributaries to be “waters of the United States.” For example, for many years EPA has reviewed and approved state water quality standards for ephemeral waters under CWA section 303(c), several Corps’ Nationwide Permits under CWA section 404 address discharges of dredged or fill material into ephemeral waters, and the agencies’ definition of “waters of the United States” prior to this rule included all tributaries without reference to flow regime.

Numerous commenters asked that the final rule define “bed and banks,”

which are physical characteristics called for under the definition of tributary. Such commenters emphasized the importance of a definition of “bed and banks,” and some suggested definitional language. To increase clarity, the preamble in IV.F.1. above includes a definition of bed and banks adapted largely from longstanding agencies’ practice as well as comments. Several commenters suggested that the rule should add a definition of “ordinary high water mark.” In response and to increase clarity, the rule adds the Corps’ existing regulatory ordinary high water mark definition to EPA’s regulations. Corps technical manuals are available to help identify ordinary high water mark, referenced above. Several commenters suggested that the agencies not require a tributary to have both bed and banks and ordinary high water mark, because bed and banks are themselves an indicator of ordinary high water mark, and because ordinary high water mark alone is an appropriate criterion for many streams in the arid west where the characteristic of bed and banks is less common. The agencies based their significant nexus determination for the covered tributaries in part on the amount of flow indicated where a tributary has both a bed banks and another indicator of ordinary high water mark, so the rule continues to require both physical indicators with the preamble at IV.F.1. above clarifying the means to conclude that those indicators exist.

Several commenters suggested that the rule exclude all constructed waters from the definition of “waters of the United States.” While the rule does exclude several types of constructed waters from jurisdiction, it continues to consider constructed tributaries as jurisdictional unless expressly excluded in paragraph (b) for the reasons described in section IV.I. and the Technical Support Document.

Many comments recommended that wetlands, ponds, and lakes that contribute flow to a traditional navigable water, interstate water, or the territorial seas but lack a bed and banks and ordinary high water mark not be considered as tributaries, because of the importance of those physical characteristics to the definition. Wetlands typically lack bed and banks and ordinary high water mark, while lakes and ponds typically have an ordinary high water mark and a bed but may lack banks. The proposed rule expressly sought comment on whether such waters should be considered as tributaries or as “adjacent waters,” recognizing that it might add an element of uncertainty to the definition of

“tributary” to include waters that lacked the physical features called for in the definition. In addition, the SAB commented that tributaries are not typically defined to include lentic systems (still waters), and suggested that the agencies reconsider including ponds, lakes, and wetlands as covered adjacent waters instead of tributaries. SAB 2014b at 2. In response, the rule does not consider these waters to be tributaries, but defines covered adjacent waters to include wetlands, lakes, and ponds that connect segments of tributaries or are at the head of the tributary system. See section G for further discussion.

G. Adjacent Waters

Section III above explains the basis for the agencies’ conclusion that covered adjacent waters have a significant nexus with traditionally navigable waters, interstate waters, or the territorial seas. The adjacency provision is based on the best available science, intent of the CWA, and case law, and is consistent with the experience of the agencies in making case-specific significant nexus determinations. As discussed above in Section III, the SAB concludes, “[t]he available science supports [the agencies’] proposal to include adjacent waters and wetlands as waters of the United States.” SAB 2014b at 2. This section describes the provisions of the rule governing adjacent waters, changes made to the adjacent waters provision based on comments on the proposed rule, and, finally, how science and the law support the agencies’ conclusions in the final rule.

1. What are the provisions of the rule?

Under the rule, “adjacent” means bordering, contiguous, or neighboring, including waters separated from other “waters of the United States” by constructed dikes or barriers, natural river berms, beach dunes, and the like. Waters adjacent to a traditional navigable water, interstate water, territorial sea, impoundment, or tributary, are “waters of the United States.” For purposes of adjacency, an adjacent water includes wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a traditional navigable water, interstate water, the territorial seas, an impoundment, or a tributary. Therefore, waters that connect segments of a traditional navigable water, interstate water, the territorial seas, an impoundment, or a tributary or are located at the head of a traditional navigable water, interstate water, the territorial seas, an impoundment, or a tributary may be determined to be

bordering, contiguous, or neighboring, and thus adjacent. “Adjacent waters” include wetlands, ponds, lakes, oxbows, impoundments, and similar water features. “Adjacent waters” do not include any water excluded under paragraph (b) of the rule. Note also that a water that does not meet the definition of “adjacent waters” may be determined to be a “water of the United States” on a case-specific basis under paragraph (a)(8) of the rule.

Within the definition of “adjacent,” the terms bordering and contiguous are well understood, and for continuity and clarity the agencies continue to interpret and implement those terms consistent with the current policy and practice. Waters separated by a berm or other similar feature remain “adjacent” under the definition.

Some waters included under the definition of “tributary” in the proposed rule, after consideration of public comment, are “adjacent” in the final rule. Specifically, waters that connect segments of, or are at the head of, a traditional navigable water, interstate water, the territorial seas, an impoundment, or a tributary are adjacent to that water. For example, a pond that is the source water to a tributary and borders the tributary at its uppermost reach is jurisdictional as an adjacent water. Further, the rule states that an adjacent water includes wetlands within or abutting its ordinary high water mark. This language is designed to ensure that if there is a fringe wetland abutting that pond that is the source water to a tributary, that wetland is considered part of the pond under the rule and such pond as a whole, including any abutting wetlands, is jurisdictional as an adjacent water.

For purposes of adjacency, including all three provisions of the definition of “neighboring,” the entire water is adjacent if any part of the water is bordering, contiguous or neighboring. Therefore, the entire wetland is “adjacent” if any part of it is within the distance thresholds established in the definition of “neighboring.” For example, if a tributary has a 1,000 foot wide 100-year floodplain, then a water that is located within 1,000 feet of the ordinary high water mark of a covered tributary and extends to 2,000 feet is jurisdictional in its entirety as “neighboring.” In addition, for purposes of determining whether a water is “adjacent” artificial features (such as roads) do not divide a water; rather, the water is treated as one entire water.

The definition of “adjacent” in the rule does not include those waters in which established, normal farming, silviculture, and ranching activities

occur. Wetlands and farm ponds in which normal farming activities occur, as those terms are used in section 404(f) of the Clean Water Act and its implementing regulations, are not jurisdictional under the Act as an “adjacent” water. Waters in which normal farming, ranching, and silviculture activities occur instead will continue to be subject to case-specific review, as they are today. These waters may be determined to have a significant nexus on a case-specific basis under paragraph (a)(7) or (a)(8). Recognizing the vital role of farmers in providing the nation with food, fiber, and fuel, the Clean Water Act in Section 404(f) exempts many normal farming activities such as seeding, harvesting, cultivating, planting, soil and water conservation practices, and other activities from the Section 404 permitting requirement. “Normal” farming, ranching, and silviculture is clarified in the agencies’ implementing regulations to mean established and ongoing activities to distinguish from activities needed to convert an area to farming, silviculture, or ranching and activities that convert a water to a non-water. 40 CFR 232.3(c)(1). The rule reflects this framework by clarifying the waters in which the activities Congress exempted under Section 404(f) occur are not jurisdictional as “adjacent.” It is important to recognize that “tributaries,” including those ditches that meet the tributary definition, are not “adjacent” waters and are jurisdictional by rule.

This provision interprets the intent of Congress and reflects the intent of the agencies to minimize potential regulatory burdens on the nation’s agriculture community, and recognizes the work of farmers to protect and conserve natural resources and water quality on agricultural lands. While waters in which normal farming, silviculture, or ranching practices occur may be determined to significantly affect the chemical, physical, or biological integrity of downstream navigable waters, the agencies believe that such determination should be made based on a case-specific basis instead of by rule. The agencies also recognize that waters in which normal farming, silviculture, or ranching practices occur are often associated with modifications and alterations including drainage, changes to vegetation, and other disturbances the agencies believe should be specifically considered in making a significant nexus determination.

The rule establishes a definition of “neighboring” for purposes of determining adjacency. In the rule, the

agencies identify three circumstances under which waters would be “neighboring” and therefore “waters of the United States.”

First, the term “neighboring” includes all waters located in whole or in part within 100 feet of the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, an impoundment, or a covered tributary.

Second, the term “neighboring” includes all waters within the 100-year floodplain of a traditional navigable water, interstate water, the territorial seas, an impoundment, or a covered tributary that is located in whole or in part within 1,500 feet of the ordinary high water mark of that jurisdictional water. In this rule, the agencies interpret “100-year floodplain” to mean “the area that will be inundated by the flood event having a one percent chance of being equaled or exceeded in any given year.” This is consistent with the Federal Emergency Management Agency’s (FEMA) definition of “100-year flood.” If the 100-year floodplain is greater than 1,500 feet from the ordinary high water mark, only those waters that are located in whole or in part within 1,500 feet of the ordinary high water mark are “neighboring.” In addition, if the 100-year floodplain is less than 1,500 feet from the ordinary high water mark, only those waters located in whole or in part within the floodplain are “neighboring” under this provision.

Third, the rule defines “neighboring” to include all waters located in whole or in part within 1,500 feet of the high tide line of a traditional navigable water or the territorial seas, and all waters located within 1,500 feet of the ordinary high water mark of the Great Lakes. This provision defines waters that begin within 1,500 feet of a tidally-influence traditional navigable water or the territorial seas and waters within 1,500 feet of the ordinary high water mark of the Great Lakes as “waters of the United States.” To provide clarity for this aspect of the definition, the agencies incorporated the Corps’ existing definition of high tide line into EPA’s regulations at paragraph (c)(7) in the rule.

As noted above, the rule provides that with respect to the boundaries for covered adjacent waters the entire water is jurisdictional as long as the water is at least partially located within the distance threshold, and the agencies interpret the rule to apply to any single water or wetland that may straddle a distance threshold. Low-centered polygonal tundra and patterned ground bogs (also called strangmoor, string bogs, or patterned ground fens) are

considered a single water for purposes of the rule because their small, intermingled wetland and non-wetland components are physically and functionally integrated. These areas often have complex micro-topography with repeated small changes in elevation occurring over short distances. Science demonstrates that these wetlands function as a single wetland matrix having clearly hydrophytic vegetation, hydric soils, and wetland hydrology. As a result, the agencies will continue to evaluate these wetlands as a single water under the rule. Where any portion of these wetland types is bordering, contiguous or neighboring, the entire wetland is a “water of the United States.” Similarly, for purposes of a case-specific determination under paragraph (a)(8), wetlands of these types constitute a single water when making a significant nexus determination. Other wetlands may also have intermingled wetland and non-wetland components that are so physically and functionally integrated they can be considered a single water for purposes of the rule. Groups of wetlands that are simply part of a complex of wetlands would not be considered a single water for purposes of the rule.

The final rule also makes some ministerial changes to the definition of “adjacent.” The existing regulation defined “adjacent” to mean “bordering, contiguous, or neighboring,” and had a second sentence that clarified that wetlands separated by berms and the like remain adjacent wetlands. The final rule combines those sentences without changing the scope of adjacency.

When determining the jurisdictional boundaries under the CWA for “adjacent waters,” the agencies will rely on published FEMA Flood Zone Maps to identify the location and extent of the 100-year floodplain. <https://msc.fema.gov/portal>. These maps are publicly available and provide a readily accessible and transparent tool for the public and agencies to use in locating the 100-year floodplain. It is important to recognize, however, that much of the United States has not been mapped by FEMA and, in some cases, a particular map may be out of date and may not accurately represent existing circumstances on the ground. The agencies will determine if a particular map is no longer accurate based on factors, such as streams or rivers moving out of their channels with associated changes in the location of the floodplain. In the absence of applicable FEMA maps, or in circumstances where an existing FEMA map is deemed by the agencies to be out of date, the agencies will rely on other available tools to

identify the 100-year floodplain, including other Federal, State, or local floodplain maps, Natural Resources Conservation Service (NRCS) Soil Surveys (Flooding Frequency Classes), tidal gage data, and site-specific modeling (e.g., Hydrologic Engineering Centers River System Analysis System or HEC-RAS). <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm> and HEC-RAS and <http://www.hec.usace.army.mil/software/hec-ras/>. Additional supporting information can include historical evidence, such as photographs, prior delineations, topographic maps, and existing site characteristics. Because identifying the 100-year floodplain is an important aspect of establishing jurisdiction under the rule and the reliable and appropriate tools for identifying the 100-year floodplain may vary, the agencies will coordinate with other federal and state agencies to develop additional information for EPA and Corps field staff to further improve tools for identifying the 100-year floodplain in a consistent, predictable, and scientifically valid manner.

When determining the outer distance threshold for an “adjacent water” the line is drawn perpendicular to the ordinary high water mark or high tide line of the traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary and extended landward from that point. If there are breaks in the ordinary high water mark, the line should be extrapolated from the point where the ordinary high water mark is observed on the downstream side to the point where the ordinary high water mark is lost on the upstream side. Therefore, waters may meet the definition of neighboring even where, for example, a tributary temporarily flows underground.

The agencies emphasize that they fully support efforts by States and tribes to protect under their own laws any additional waters, including locally special waters that may not be within the Federal protections of the CWA as the agencies have interpreted its scope in this rule. In promulgating the adjacent water boundaries, the agencies have balanced protection and clarity, scientific uncertainties and regulatory experience, and established boundaries that are, in their judgment, reasonable and consistent with the statute and its goals and objectives.

If waters identified in this section are determined to be adjacent, no case-specific significant nexus evaluation is required.

2. What changes did the agencies make from the proposed rule based on public comments?

In the proposal, the agencies sought comment on a number of ways to address and clarify jurisdiction over “adjacent waters,” including establishing a floodplain interval and providing clarity on reasonable proximity as an important aspect of adjacency. In light of the comments, the science, the agencies’ experience, and the Supreme Court’s consistent recognition of the agencies’ discretion to interpret the bounds of CWA jurisdiction, the agencies have made some revisions in the final rule designed to more clearly establish boundaries on the scope of “adjacent waters.”

Under the proposal and the final rule, “adjacent waters” are jurisdictional based on the conclusion that they have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas, and there is no need for additional analysis. Some commenters wanted a case-specific analysis for all “adjacent waters” as they believed that the waters would not individually have a significant nexus to an adjacent “water of the United States,” while others noted that their functional relationship to the downstream traditional navigable waters, interstate waters, or the territorial seas warranted the conclusion that they were all jurisdictional. Based on a review of the science, the agencies’ expertise and experience, and the law, the agencies determined that “adjacent waters,” as defined, alone or in combination with other covered “adjacent waters” in a watershed have a significant nexus to a traditional navigable water, interstate water or the territorial seas and therefore are “waters of the United States” without the need for any additional analysis. However, the rule also provides for case-specific analysis of some waters that do not meet the definition of “neighboring” established by the rule. See section IV.H.

The proposal included wetlands, ponds, lakes, and impoundments that contribute flow, directly or indirectly, to the downstream traditional navigable waters, interstate waters, or the territorial seas in the definition of “tributary.” Some commenters expressed concern that since such waters generally do not have both an ordinary high water mark and a bed and banks, the definition of tributary was contradictory and confusing. The agencies sought comment on whether to treat these waters as “adjacent waters” instead of tributaries, since they not

only contribute flow, but they also border or are contiguous to the waters to which they contribute flow. The SAB in particular commented that the agencies “may want to consider whether flow-through lentic systems should be included as “adjacent waters” and wetlands, rather than as tributaries.” SAB 2014b at 2. In light of the comments and to provide additional clarity, the agencies revised the definitions of “adjacent” and “tributary” to include these waters as “adjacent.”

Under the existing rule, there is no definition for the term “neighboring,” and the public commented that not having a definition created a lack of clarity and inconsistent field practices across the nation. In the proposal, “neighboring” was defined to include waters located within the riparian area or floodplain of a traditional navigable water, interstate water, territorial sea, impoundment, or tributary; waters with a shallow subsurface hydrologic connection to a jurisdictional water; and waters with a confined surface hydrologic connection to a jurisdictional water. Although the definitions were scientifically-based for the terms “riparian area” and “floodplain” to define the lateral reach of the term “neighboring,” some commenters indicated that the proposed definitions to clarify neighboring were not clear. Those commenters requested that a specific floodplain interval or other limitation should be established to more clearly identify the outer limit of neighboring. Some commenters stated that the proposed definition of “neighboring” was unclear, while other commenters found the definition helped clarify CWA jurisdiction and were supportive of including a broad definition, based on ecological interconnectedness.

Some commenters stated that the proposed definitions of “riparian area” and “floodplain” were vague or ambiguous, broad or effectively limitless, beyond the agencies’ authority or difficult or impossible to implement in the field. Other commenters were supportive of using the riparian area as a basis for adjacency. Some commenters asked why the agencies were proposing a new definition of “floodplain” that was inconsistent with the definition used by other Federal agencies like NRCS or FEMA. Some commenters suggested that if the agencies use floodplains as a means to define “neighboring,” it should be limited to the area inundated by the 2-year, 5-year, 10-year, or 20-year flood, while other commenters supported the use of the 100-year floodplain as a component of

“neighboring.” Some commenters supported including all wetlands and other waters in the 100-year floodplain as categorically jurisdictional. Other commenters requested that floodplain size be based on tributary size, while others suggested that it should be based on soil and geologic features, and some suggested the use of the FEMA flood zone maps. Some commenters stated that “reasonable proximity” was neither defined nor clarified adjacency, noting that adjacency should not apply to waters separated from a “water of the United States” by great distances.

In response to comments and to provide greater clarity and consistency, in the rule the agencies establish a definition of neighboring which provides additional specificity requested by some commenters, including establishing a floodplain interval and providing specific boundaries from traditional navigable waters, interstate waters, the territorial seas, impoundments, and tributaries. In the proposal, the agencies requested comment on whether the rule should provide greater specificity with regard to how the agencies will determine if a water is located in the floodplain of a jurisdictional water. 79 FR 22209. As recommended by the public and based on science, the agencies’ boundaries for “neighboring” are based largely on use of the 100-year floodplain. The agencies concluded that the use of the riparian area was unnecessarily complicated and that as a general matter, waters in the riparian area will also be in the 100-year floodplain. Further, should the riparian area on occasion extend beyond the 100-year floodplain, the agencies have the ability to perform a case-specific significant nexus analysis on a water out to 4,000 feet from the ordinary high water mark or high tide line of a traditional navigable water, interstate water, the territorial sea, impoundment, or tributary. The agencies have drawn these lines based on their technical expertise and experience in order to provide a rule that is practical to understand and implement and protects those waters that significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. Because science indicates that connectivity is on a gradient, the agencies have also identified limited circumstances in which waters that do not meet the definition of “neighboring” may be determined on a case-specific basis to have a significant nexus. See section IV.I.

First, the rule establishes as “neighboring” waters that occur within 100 feet from traditional navigable

waters, interstate waters, the territorial seas, impoundments, and tributaries.

Second, the rule utilizes a specific floodplain and also establishes maximum distances for purposes of “neighboring.” Studies have found that waters within the floodplain are dynamically connected and frequently interact with the downstream traditional navigable water, interstate water, territorial sea, impoundment, or tributary. Some commenters indicated that a specific floodplain or other designation should be set to define the outer boundary of “neighboring.” Further, some commenters requested that the 100-year floodplain designation be used to define the outer boundary of adjacency because the public understands this concept. Several commenters recommended that FEMA or NRCS maps be used to support the analysis as these maps are easily accessible to the public. Because FEMA maps exist for many areas of the country and the NRCS Soil Survey maps do as well, the agencies decided that defining “neighboring” based in part on a particular floodplain or recurrence interval was a reasonable means of ensuring the consistency and certainty that is important to the public and for implementation of the CWA. In drawing lines, the agencies chose the 100-year floodplain in part because FEMA and NRCS together have generally mapped large portions of the United States, and these maps are publicly available, well-known and well-understood.

Because the 100-year floodplain can be very wide in some areas of the country, particularly near large rivers, the agencies chose to provide increased clarity and certainty while ensuring that waters that provide important functions significantly affecting the chemical, physical, and biological integrity of the downstream traditional navigable waters, interstate waters, or the territorial seas are protected by establishing a 1,500 foot maximum distance for neighboring waters in the rule. Waters within the 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark are adjacent without regard to the presence of berms or other barriers. However, because the science demonstrates that floodplain waters provide important functions for downstream waters, the agencies have established a provision under paragraph (a)(8) for case-specific significant nexus evaluations of waters located in the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas beyond 1,500 feet.

The rule also establishes a separate bright line for including as

jurisdictional those waters that occur within 1,500 feet of tidally-influenced traditional navigable waters or the territorial seas.

The proposal defined “neighboring” to include waters with a surface connection to jurisdictional waters and some commenters recommended eliminating surface hydrologic connectivity as a basis for adjacency. The definition of neighboring does not include a provision defining “neighboring” based on a surface hydrologic connection. However, waters with confined surface hydrologic connections are considered adjacent where they are bordering, contiguous, or neighboring a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary. For example, a water with a confined surface hydrologic connection to a traditional navigable water that is 1,200 feet from the high tide line of that water would meet the definition of neighboring and be considered an adjacent water. In circumstances where a water does not meet the definition of neighboring but is located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, or within 4,000 feet of a jurisdictional water, a confined surface hydrologic connection may be an important factor in evaluating a case-specific significant nexus under paragraph (a)(8). See section H. below.

The proposal defined “neighboring” to include waters connected with a shallow subsurface connection, and some commenters recommended eliminating subsurface hydrologic connectivity as a basis for adjacency. For example, some commenters asserted that, because the CWA does not apply to groundwater, the agencies do not have the authority to assert jurisdiction over waters connected to other “waters of the United States” via a shallow subsurface hydrologic connection. Some commenters were concerned that the distinction between “groundwater” and a “shallow subsurface connection” was unclear and questioned whether using a shallow subsurface connection as a basis for adjacency is contradictory to excluding groundwater—including groundwater drained through subsurface drainage systems—as a “water of the United States.” Some commenters supported use of shallow subsurface connectivity for adjacency, since the significant nexus test would be employed to make the determination of jurisdiction. Several commenters suggested that the rule should protect groundwater and shallow subsurface flow, due to its connectivity to other “waters of the United States” and

particularly since altering it could affect the downstream waters. A few commenters simply requested clarifications regarding issues such as how to determine whether a subsurface connection exists; the meaning of “shallow;” distinguishing between “shallow” and “deep;” whether there were any boundaries on adjacency via hydrologic connectivity; and determining whether the connection was “sufficient” to establish adjacency. In order to provide more certainty to the public, the rule does not include a provision defining neighboring based on shallow subsurface flow, though such flow may be an important factor in evaluating a water on a case-specific basis under paragraph (a)(8), as appropriate.

Some commenters expressed concern that the agencies’ proposed definition of “neighboring,” “riparian area,” and “floodplain” would mean that all land within the floodplain or riparian area would become regulated. In fact, only waters, not land, in the floodplain or riparian area would have been considered adjacent under the proposed rule. Similarly, under the final rule, only waters, not land, are adjacent. In response, the agencies have eliminated the definitions of floodplain and riparian area and have provided a definition of neighboring which is clear that only waters in specified circumstances may be “waters of the United States.”

The agencies also eliminated a parenthetical from the existing “adjacent wetlands” regulatory provision. The phrase “other than waters that are themselves wetlands” was intended to preclude asserting CWA jurisdiction over wetlands that were simply adjacent to a non-jurisdictional wetland. Such waters do not meet the definition of “adjacent” under the rule since waters must be adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary, so the phrase is unnecessary and confusing. With this change, the agencies are protecting all waters that meet the definition of “adjacent” as “waters of the United States,” and eliminating confusion caused by the parenthetical. For example, where the 100-year floodplain is greater than 1,500 feet, all wetlands within 1,500 feet of the tributary’s ordinary high water mark are jurisdictional because they are “neighboring” to the tributary, regardless of the wetlands’ position relative to each other.

Some commenters stated that the proposed rule was an expansion of jurisdiction because it would change the

provision from “adjacent wetlands” to “adjacent waters.” The agencies acknowledge that under the existing regulation, the adjacency provision applied only to wetlands adjacent to “waters of the United States.” However, also under the existing regulation, “other waters” (such as intrastate rivers, lakes and wetlands that are not otherwise jurisdictional under other sections of the rule) could be determined to be jurisdictional if the use, degradation or destruction of the water could affect interstate or foreign commerce. This provision of the existing regulation reflected the agencies’ interpretation at the time of the jurisdiction of the CWA to extend to the maximum extent permissible under the Commerce Clause of the Constitution. Therefore, while the language of the specific adjacency provision in the final rule may have changed from wetlands to waters, that does not represent an expansion of jurisdiction as a whole in comparison to the existing regulation, since adjacent non-wetland waters would have been subject to jurisdiction under the “other waters” provision. The final rule does not protect all waters that were protected under the “other waters” provision of the existing regulation, and therefore the inclusion of adjacent ponds, for example, in the “adjacent waters” provision of the final rule does not reflect an overall expansion of jurisdiction when compared to the existing regulation.

3. How do science and law support the rule?

Based on a review of the scientific literature and the agencies’ expertise and experience the agencies determined that the categories of waters discussed below are integrally linked to the chemical, physical, or biological functions of waters to which they are adjacent and downstream to the traditional navigable waters, interstate waters or the territorial seas. Therefore, the agencies determined that the waters defined as adjacent have a significant nexus with traditional navigable waters, interstate waters or the territorial seas and are thus “waters of the United States.” Additional information, including citations, can be found in section III of the preamble, the Science Report, and the Technical Support Document for the rule.

a. Waters that are Bordering or Contiguous

As discussed in section III above, wetlands, ponds, lakes, oxbows, impoundments, and similar water features that are bordering or contiguous

perform a myriad of critical chemical and biological functions associated with the downstream traditional navigable waters, interstate waters, or the territorial seas. Such waters are integrally linked with the jurisdictional waters to which they are adjacent. Because of their close physical proximity to nearby jurisdictional waters, bordering or contiguous waters readily exchange their waters through the saturated soils surrounding the traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary or through surface exchange. This commingling of waters allows bordering or contiguous waters to both provide chemically transformed waters to streams and to absorb excess stream flow, which in turn can significantly affect downstream traditional navigable waters, interstate waters, or the territorial seas. The close proximity also allows for the direct exchange of biological materials, including organic matter that serves as part of the food web of downstream traditional navigable waters, interstate waters, or the territorial seas. Waters that are bordering or contiguous are often located on the floodplain or within the riparian area of the waters to which they are adjacent. Bordering or contiguous waters include those that directly abut a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary. The Science Report and the Technical Support Document demonstrate that such waters are physically, chemically, and biologically integrated with downstream traditional navigable waters, interstate waters, or the territorial seas and significantly affect their integrity.

b. Waters Separated From Other “Waters of the United States” by Constructed Dikes or Barriers, Natural River Berms, Beach Dunes and the Like

Adjacent waters separated from a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary by constructed dikes or barriers, natural river berms, beach dunes, and the like continue to have a significant effect on downstream traditional navigable waters, interstate waters, or the territorial seas, either alone or in combination with other “adjacent waters.” Such waters continue to have a hydrologic connection to downstream waters. This is because constructed dikes or barriers, natural river berms, beach dunes, and the like typically do not block all water flow. This hydrologic connection can occur via

seepage, or the flow of water through the soil pores, or via over-topping, where water from the nearby traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary periodically overtops the berm or other similar feature. Berm-like landforms known as natural levees occur naturally and do not isolate adjacent wetlands from the streams that form them. Natural levees and the wetlands and waters behind them are part of the floodplain. Natural levees are discontinuous, which allows for a hydrologic connection to the stream or river via openings in the levees and thus the periodic mixing of river water and backwater. Man-made levees and similar structures also do not isolate “adjacent waters.” Waters, including wetlands, separated from a jurisdictional water by a natural or man-made berm serve many of the same functions as other “adjacent waters.” Furthermore, even in cases where a hydrologic connection may not exist, there are other important considerations, such as chemical and biological functions, that result in a significant nexus between the adjacent wetlands or waters and the nearby “waters of the United States,” and traditional navigable waters, interstate waters, or the territorial seas. On this point, Justice Kennedy stated: “In many cases, moreover, filling in wetlands separated from another water by a berm can mean that floodwater, impurities, or runoff that would have been stored or contained in the wetlands will instead flow out to major waterways. With these concerns in mind, the Corps’ definition of adjacency is a reasonable one, for it may be the absence of an interchange of waters prior to the dredge and fill activity that makes protection of the wetlands critical to the statutory scheme.” *Rapanos* at 775. For instance, covered adjacent waters behind berms can still serve important water quality functions, serving to filter pollutants and sediment before they reach downstream waters. Wetlands and open waters behind berms, where the system is extensive, can help reduce the impacts of storm surges caused by hurricanes. Such “adjacent waters,” including wetlands, separated from waters by berms and the like maintain ecological connection with those waters. It is not the existence of the dike, levee, and the like that makes these waters jurisdictional. Adjacent waters separated from the tributary network by constructed dikes or barriers, natural river berms, beach dunes, and the like continue to have a hydrologic connection to downstream waters.

Waters behind berms and the like can significantly affect the chemical, physical, and biologic integrity of traditional navigable waters, interstate waters, or the territorial seas.

c. Waters Within 100 Feet

All wetlands, ponds, lakes, oxbows, impoundments, and similar water features that are located in whole or in part within 100 feet of the ordinary high water mark of a jurisdictional water perform a myriad of critical chemical, physical, and biological functions associated with the downstream traditional navigable water, interstate water or the territorial seas and therefore the agencies have determined that they are “neighboring” and thus “waters of the United States.” Waters within 100 feet of a jurisdictional water are often located within the riparian area and are often connected via surface and shallow subsurface hydrology to the water to which they are adjacent. While the SAB was clear that distance is not the only factor that influences connections and their effects downstream, due to their close proximity to jurisdictional waters, waters within 100 feet are often located within a landscape position that allows for them to receive and process surface and shallow subsurface flows before they reach streams and rivers. These waters individually and collectively affect the integrity of downstream waters by acting primarily as sinks that retain floodwaters, sediments, nutrients, and contaminants that could otherwise negatively impact the condition or function of downstream waters. Wetlands and open waters within close proximity of jurisdictional waters improve water quality through assimilation, transformation, or sequestration of nutrients, sediment, and other pollutants that can affect the integrity of downstream traditional navigable waters, interstate waters, or the territorial seas. These waters, including wetlands, also provide important habitat for aquatic-associated species for forage, breed, and rest.

In order to provide greater clarity and consistency and based on a review of the science and the agencies’ expertise and experience, the agencies identified a 100 foot threshold for neighboring waters to a traditional navigable water, interstate water, territorial sea, tributary, or impoundment. Further, the agencies determined that there is a significant nexus with the downstream traditional navigable waters, interstate waters, or the territorial seas, and these “adjacent waters” are “waters of the United States.” With respect to provision of water quality benefits downstream, non-

floodplain waters within close proximity of the stream network often are able to have more water quality benefits than those located at a distance from the stream. Many studies indicate that the primary water quality and habitat benefits will generally occur within a several hundred foot zone of a water. In addition, the scientific literature indicates that to be effective, contaminant removal needs to occur at a reasonable distance prior to entry into the downstream traditional navigable waters, interstate waters, or the territorial seas. Some studies also indicate that fish, amphibians (e.g., frogs, toads), reptiles (e.g., turtles), and small mammals (e.g., otters, beavers, etc.) will use at least a 100 foot zone for foraging, breeding, nesting, and other life cycle needs.

Based on a review of the scientific literature and the agencies’ expertise and experience, there is clear evidence that the identified waters within 100 feet of the ordinary high water mark of a jurisdictional water, even when located outside the floodplain, perform critical processes and functions discussed in section III above. All waters within 100 feet of a jurisdictional water significantly affect the chemical, physical, or biological integrity of the waters to which they are adjacent, and those waters in turn significantly affect the chemical, physical, or biological integrity of the downstream traditional navigable waters, interstate waters, or the territorial seas. The agencies established a 100 foot threshold from the water’s lateral limit in the definition of neighboring because, based on the agencies’ expertise and experience implementing the CWA and in light of the science, the agencies concluded this was a reasonable and practical boundary within which to conclude the waters clearly significantly affected the integrity of traditional navigable waters, interstate waters, or the territorial seas, and these “adjacent waters” are “waters of the United States.”

d. Floodplain Waters Within 1,500 Feet

As discussed in section III above, wetlands and open waters that are neighboring perform a myriad of critical chemical and biological functions associated with the downstream traditional navigable waters, interstate waters, or the territorial seas. The scientific literature supports that wetlands and open waters in floodplains are chemically, physically, and biologically connected to downstream traditional navigable waters, interstate waters, or the territorial seas and significantly affect the integrity of such waters. The Science

Report concludes that wetlands and open waters located in “floodplains are physically, chemically and biologically integrated with rivers via functions that improve downstream water quality, including the temporary storage and deposition of channel-forming sediment and woody debris, temporary storage of local ground water that supports baseflow in rivers, and transformation and transport of stored organic matter.” Science Report at ES–2 to ES–3. Such waters act as the most effective buffer to protect downstream waters from nonpoint source pollution (such as nitrogen and phosphorus), provide habitat for breeding fish and aquatic insects that also live in streams, and retain floodwaters, sediment, nutrients, and contaminants that could otherwise negatively impact the condition or function of downstream waters.

For waters in the 100-year floodplain within 1,500 feet of the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary, the agencies determine there is a significant nexus with the downstream traditional navigable waters, interstate waters, or the territorial seas and these waters are critical to protect the downstream waters. Based on a review of the scientific literature, the agencies’ technical expertise and experience, and the implementation value of drawing clear lines, the rule establishes a boundary for floodplain waters to meet the definition of “neighboring” and be “waters of the United States” by rule. This boundary was established in order to protect vitally important waters within a watershed while at the same time providing a practical and implementable rule. The agencies are not determining that waters in the floodplain farther than 1,500 feet from the ordinary high water mark never have a significant nexus. Rather, the agencies are using their technical expertise to promulgate a practical rule that draws reasonable boundaries in order to protect the waters that most clearly have a significant nexus while minimizing uncertainty about the scope of “waters of the United States.” Because waters beyond these boundaries may have a significant nexus, the rule also establishes areas in which a case-specific significant nexus determination must be made. See section IV.H.

e. Waters Within 1,500 Feet of Tidally-Influenced Traditional Navigable Waters or the Territorial Seas or the Great Lakes

Many tidally-influenced waters do not have floodplains, so the agencies

include a separate provision within the definition of “neighboring” to protect the “adjacent” waters that have a significant nexus to tidally-influenced traditional navigable waters or the territorial seas or the Great Lakes. Under *Riverside Bayview* and Justice Kennedy’s opinion in *Rapanos*, waters adjacent to traditional navigable waters, including the territorial seas, are “waters of the United States.” Because the connection to a tidally-influenced traditional navigable water, the territorial seas, or the Great Lakes is so close, the rule defines “neighboring” to include waters within 1,500 feet of the high tide line or the ordinary high water mark of the Great Lakes. Wetlands, ponds, lakes, oxbows, impoundments, and similar water features within 1,500 feet of these waters are physically connected to such waters by surface and shallow subsurface flow. As demonstrated in section III above, these waters perform a myriad of critical chemical and biological functions associated with these nearby waters to which they are adjacent.

These waters in combination significantly affect the integrity of the connected tidally influenced traditional navigable water or the territorial seas or the Great Lakes by acting primarily as sinks that retain floodwaters, sediments, nutrients, and contaminants that could otherwise negatively impact the condition or function of those waters. Like floodplain waters, the scientific literature supports that wetlands and other similar waters within close proximity improve water quality through assimilation, transformation, or sequestration of nutrients, sediment, and other pollutants that can affect downstream water quality. These waters also provide important habitat for aquatic-associated species to forage, breed, and rest in.

For example, wetlands dominated by grass-like vegetation that occur in depressional areas between sand dunes or beach ridges along the territorial seas and the Great Lakes shoreline are dependent upon these waters for their water source. The waters, including wetlands, generally form when water levels of the territorial seas fall or the Great Lakes drop, creating swales that support a diverse mix of wetland vegetation and many endangered and threatened species. Many studies demonstrate that these waters have been shown to act in concert with the rising and lowering of the tide, and that the critical functions provided by these waters are similar and play an important role in maintaining the chemical, physical, or biological integrity of the nearby traditional navigable waters,

interstate waters, or the territorial seas because of the hydrological and ecological connections to and interactions with those waters.

Science demonstrates that distance is a factor in the connectivity and the strength of connectivity of wetlands and open waters to downstream waters. Thus, waters that are more distant generally have less opportunity to be connected to downstream waters. Wetlands and open waters closer to the stream network generally will have greater hydrologic and biological connectivity than waters located farther from the same network. For instance, waters that are more closely proximate have a greater opportunity to contribute flow. Via their hydrologic connectivity, they also have chemical connectivity to and effects on these downstream waters and are more likely to impact water quality due to their close distance. Waters more closely located to these waters are also more likely to be biologically connected to such waters more frequently and by more species, including amphibians and other aquatic animals. Because tidally-influenced traditional navigable waters, the territorial seas, and the Great Lakes are generally much larger in size than other jurisdictional waters, the agencies believe that a 1,500 foot threshold is a reasonable distance to capture most wetlands and open waters that are so closely linked to these waters that they can properly be considered adjacent as neighboring waters.

Based on a review of the scientific literature and the agencies’ expertise and experience, there is clear evidence waters within 1,500 feet of these waters, even when located outside the floodplain, perform critical processes and functions discussed in section III above. The agencies established a 1,500 foot threshold from the water’s lateral limit, which would be either the high tide line or the ordinary high water mark, in the definition of neighboring because, based on the agencies’ expertise and experience implementing the CWA and in light of the science, the agencies concluded this was a reasonable and practical boundary within which to conclude the waters most clearly significantly affected the integrity of the traditional navigable water or the territorial seas, and these covered adjacent waters are “waters of the United States.” Waters located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, and waters located more than 1,500 feet and less than 4,000 feet from the ordinary high water mark of a traditional navigable water, interstate water, the territorial

seas, an impoundment, or a tributary, may still be determined to have a significant nexus on a case-specific basis under paragraph (a)(8) of the rule and therefore be a “water of the United States.” See section IV.H.

H. Case-Specific “Waters of the United States”

The rule establishes two exclusive circumstances under which case-specific determinations will be made for whether a water has a “significant nexus” and is therefore a “water of the United States.” The proposed rule included a broad provision that allowed for a case-specific determination of significant nexus for any water that was not categorically jurisdictional or excluded. Many commenters expressed concern that such a broad opportunity for case-specific “waters of the United States” determinations would lead to too much uncertainty about the jurisdictional status of waters in broad areas throughout the country. The agencies have greatly reduced the extent of waters subject to this individual review by carefully incorporating the scientific literature and by utilizing agency expertise and experience to draw boundaries. The rule provides for case-specific determinations under more narrowly targeted circumstances based on the agencies’ assessment of the importance of certain specified waters to the chemical, physical, and biological integrity of traditional navigable waters, interstate waters, and the territorial seas.

First, the rule identifies at paragraph (a)(7) five subcategories of waters (Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands) that the agencies have determined are “similarly situated” for purposes of a significant nexus determination. Second, the rule identifies at paragraph (a)(8) specific circumstances under which waters will be subject to a case-specific significant nexus determination but for which the agencies have not made a “similarly situated” determination: Waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, and waters within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundments, or tributaries, as defined. If any water meets the definition of “adjacent” waters it is jurisdictional under paragraph (a)(6) and no case-specific significant nexus is required. Waters that do not fall within the six categorically jurisdictional waters identified in paragraph (a)(1) through

(a)(6) of the rule or within these two case-specific provisions are not “waters of the United States.”

This section first discusses the five subcategories of waters that the agencies determine are “similarly situated” for purposes of a significant nexus determination; second, the 100-year floodplain and 4,000 foot boundaries under which waters will be subject to a case-specific significant nexus determination but for which the agencies have not made a “similarly situated” determination; third, the definition of “significant nexus” and how the case-specific significant nexus determinations will be made under these two provisions; and, finally, the revisions made to the rule with respect to case-specific determinations and major comments.

1. Waters Determined To Be “Similarly Situated” by Rule for Which a Case-Specific Significant Nexus Determination Is Required

In the rule, paragraph (a)(7) specifies the subcategories of waters (Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands) that, if they are not otherwise jurisdictional under paragraphs (a)(1) through (a)(6), the agencies determine to be “similarly situated” by rule. In the proposal the agencies sought comment on a number of options to address remaining waters that did not fit within the jurisdictional categories, including whether to conclude that other waters were “similarly situated” in certain areas of the country or whether to conclude that specified subcategories of waters were jurisdictional. 79 FR 22215, 22216. The agencies concluded that waters within the five subcategories were “similarly situated” in the areas of the country in which they are located. The rationale for this determination is discussed above in Section III. Under paragraph (a)(7), Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands are jurisdictional when they have a significant nexus to a traditional navigable water, interstate water, or the territorial seas. Waters subject to normal farming, silviculture, and ranching activities that are within these subcategories will be assessed consistent with this provision of the rule. Waters in these subcategories are not jurisdictional as a class under the rule. However, because the agencies determined that these subcategories of waters are “similarly situated,” the waters within the specified subcategories that are not otherwise

jurisdictional under paragraph (a)(6) of the rule must be assessed in combination with all waters of the same subcategory in the region identified by the watershed that drains to the nearest point of entry of a traditional navigable water, interstate water, or the territorial seas (hereinafter referred to as the point of entry watershed).

When performing a case-specific significant nexus evaluation for a water in the paragraph (a)(7) subcategories, the rule establishes which waters must be considered in combination. The similarly situated waters identified in the subparagraphs will be combined with other waters in the same subparagraph located in a single point of entry watershed. For example, under paragraph (a)(7) only western vernal pools can be analyzed with other western vernal pools in the same point of entry watershed. Waters identified in the subparagraphs that are otherwise jurisdictional under the rule cannot be considered in combination with paragraph (a)(7) waters for purposes of a case-specific significant nexus determination under paragraph (a)(7). Individual waters of the specified subcategories may be jurisdictional under other paragraphs of this rule (e.g., a Prairie pothole that sits on a state border is an interstate water under paragraph (a)(2) or a western vernal pool that meets the definition of adjacent under paragraph (a)(6)). Where those individual waters are jurisdictional under paragraph (a)(1) through (a)(6) by rule, no case-specific significant nexus analysis is required. The rule also states that waters in paragraph (a)(7) shall not be combined with waters jurisdictional under paragraph (a)(6). Essentially, while Prairie potholes are an identified subcategory under paragraph (a)(7), that identification does not affect a Prairie pothole that borders a covered tributary and is jurisdictional as an adjacent water under paragraph (a)(6). Additionally, a Prairie pothole that is jurisdictional under paragraph (a)(6) cannot be combined with Prairie potholes that require a case-specific jurisdictional analysis under paragraph (a)(7) since “adjacent waters” have already been determined to have a significant nexus by rule. Finally, waters within the specified subcategories in paragraph (a)(7) are assessed under paragraph (a)(7) not under paragraph (a)(8); waters within the specified subcategories that are within the 100-year flood plain of a traditional navigable water, interstate water, or the territorial seas or within the 4,000 foot boundary established for case-specific determinations under

paragraph (a)(8) remain “similarly situated” waters under paragraph (a)(7). These similarly situated waters are evaluated in combination for their effect on the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas. Additional details about the case-specific significant nexus analysis are found in section 4 below.

2. Waters Within the 100-Year Floodplain of a Traditional Navigable Water, Interstate Water, or the Territorial Seas and Waters Within 4,000 Foot Boundary for Which a Case-Specific Significant Nexus Determination Is Required

Paragraph (a)(8) in the rule specifies that a water that does not otherwise meet the definition of adjacency is evaluated on a case-specific basis for significant nexus under this paragraph where it is located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or within 4,000 feet of the high tide line or ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary. Although these waters are not considered similarly situated by rule, waters under this paragraph can be determined on a case-specific basis to be similarly situated. This is a change from the proposal which would have allowed for a similarly situated analysis and significant nexus determination for any water, anywhere in the region. Under the rule, the waters specified in paragraph (a)(7) and waters that meet the requirements in paragraph (a)(8) are the only waters for which a case-specific significant nexus determination may be made.

Under paragraph (a)(8), only waters that are within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or within the 4,000 foot boundary can be evaluated on a case-specific basis for significant nexus to a traditional navigable water, interstate water, or the territorial seas. If a portion of the water is located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or 4,000 feet of the ordinary high water mark or high tide line of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary, the entire water will be considered to be within the boundaries for paragraph (a)(8) and will undergo a case-specific significant nexus determination. Under this provision, if the 100-year floodplain of a traditional navigable water,

interstate water, or the territorial seas extends beyond 4,000 feet of the ordinary high water mark, a water, that is not otherwise jurisdictional under the rule, within that floodplain will be evaluated under the 100-year floodplain boundary of paragraph (a)(8). A water within the boundaries must be evaluated on a case-specific basis for not only a significant nexus but also for a determination of whether there are any waters with which the waters is similarly situated. Waters identified in paragraph (a)(8) may not be combined with waters identified in paragraph (a)(6) for purposes of the significant nexus analysis, but may be combined with similarly situated waters located in the same point of entry watershed. If waters identified in paragraph (a)(8) also meet the definition of adjacency under paragraph (a)(6), they are jurisdictional as "adjacent waters" and do not need a case-specific significant nexus analysis. Under paragraph (a)(8), for example, the agencies would evaluate on a case-specific basis whether a low-centered polygonal tundra and patterned ground bog in an area with a small floodplain and located beyond the 1,500 foot boundary but within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas or within the 4,000 foot boundary, or a wetland in which normal farming, ranching, or silviculture activities occur, as those terms are used in section 404(f) of the Clean Water Act and its implementing regulations, has a significant nexus as defined in the rule.

Waters identified in the subcategories in paragraph (a)(7) are evaluated under paragraph (a)(7) only; the provisions of paragraph (a)(8), including the boundaries in paragraph (a)(8), do not apply to paragraph (a)(7) waters. The significant nexus analysis for waters under paragraph (a)(8) will then consider the waters individually or, if it is determined that there are similarly situated waters, as a group of waters within a point of entry watershed for their effect on the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas.

Some commenters asked how wetlands underlain by permafrost would be treated under this rule. Waters subject to case-specific review under paragraph (a)(8) will include areas determined to meet the technical definition of "wetlands" because they have the required hydrology, vegetation, and soils. The presence of permafrost is not itself determinative of whether a particular area satisfies the three parameter requirement needed to be wetlands under the rule. This is true

under existing regulations and remains unchanged in this rule. Because the definition of wetland does not change under the rule, the agencies do not anticipate the rule will alter the current scope of CWA jurisdiction over wetlands underlain by permafrost.

a. Summary of Rationale for Case-Specific Significant Nexus Analysis Within 100-Year Floodplain of a Traditional Navigable Water, Interstate Water, or the Territorial Seas

As discussed in Section III, above, the scientific literature supports that wetlands and open waters in floodplains are physically, chemically, and biologically connected to downstream traditional navigable waters, interstate waters, or the territorial seas and significantly affect the integrity of such waters. The Science Report concludes that wetlands and open waters located in "floodplains are physically, chemically and biologically integrated with rivers via functions that improve downstream water quality, including the temporary storage and deposition of channel-forming sediment and woody debris, temporary storage of local ground water that supports baseflow in rivers, and transformation and transport of stored organic matter." Science Report at ES-2 to ES-3. As described in the Science Report and the Technical Support Document, such waters act as the most effective buffer to protect downstream waters from nonpoint source pollution (such as nitrogen and phosphorus), provide habitat for breeding fish and aquatic insects that also live in streams, and retain floodwaters, sediment, nutrients, and contaminants that could otherwise negatively impact the condition or function of downstream waters. As discussed above, in defining waters as adjacent, and therefore categorically jurisdictional, the agencies established a 1,500 foot boundary for waters located within the 100-year floodplain of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary in order to protect vitally important waters while at the same time providing a practical and implementable rule. In light of the science on the functions provided by floodplain waters and wetlands, waters and wetlands within the 100-year floodplain of traditional navigable waters, interstate waters, or the territorial seas are likely to provide those functions for traditional navigable waters, interstate waters, or the territorial seas. However, because the 100-year floodplain of a traditional navigable water can, in some case be quite large, the agencies concluded it

was reasonable to subject waters and wetlands in the 100-year floodplain that are beyond 1,500 feet of the ordinary high water mark, and therefore do not meet the definition of "neighboring," to a case-specific significant nexus analysis rather than concluding that such waters are categorically jurisdictional. This inclusion of a case-specific analysis for such floodplain waters is supported by the SAB. The SAB concluded that "distance should not be the sole indicator used to evaluate the connection of 'other waters' to jurisdictional waters." SAB 2014b at 3. In allowing the case-specific evaluation of waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas that do not meet the definition of adjacency, the agencies are allowing for the functional relationship of those floodplain waters to be considered regardless of distance. The SAB also supported the Science Report's conclusion that "the scientific literature strongly supports the conclusions that streams and 'bidirectional' floodplain wetlands are physically, chemically, and/or biologically connected to downstream navigable waters; however, these connections should be considered in terms of a connectivity gradient." SAB 2014a at 1. In addition, the SAB noted, "the literature review does substantiate the conclusion that floodplains and waters and wetlands in floodplain settings support the physical, chemical, and biological integrity of downstream waters." *Id.* at 3.

The agencies do not anticipate that there will be numerous circumstances in which this provision will be utilized because relatively few traditional navigable waters will have floodplains larger than 4,000 feet (the other threshold in paragraph (a)(8) for waters regardless of floodplain). Further, the agencies recognize that extensive areas of the nation's floodplains have been affected by levees and dikes which reduce the scope of flooding. In these circumstances, the scope of the 100-year floodplain is also reduced and is reflected in FEMA mapping used by the agencies. In circumstances where there is little or no alteration of the floodplain and it remains relatively broad, the agencies will explicitly consider distance between the water being evaluated and traditional navigable water, interstate water, or the territorial seas when making a case-specific significant nexus determination. Based on the science concerning the important functions provided by floodplain waters and wetlands, the agencies established this provision to ensure that truly

important waters may still be protected on a case-specific basis. By using the 100-year floodplain and limiting the provision to traditional navigable waters, interstate waters, or the territorial seas, the agencies are reasonably balancing the protection of waters that may have a significant nexus with the goal of providing additional certainty.

b. Summary of Rationale for Case-Specific Significant Nexus Analysis Within 4,000 Foot Boundary

The agencies establish a provision in the rule for case-specific significant nexus determinations because the agencies concluded that some waters located beyond the distance limitations established for "adjacent waters" can have significant chemical, physical, and biological connections to and effects on traditional navigable waters, interstate waters, or the territorial seas. The agencies reasonably identified the 4,000 foot boundary for these case-specific significant nexus determinations by balancing consideration of the science and the agencies' expertise and experience in making significant nexus determinations with the goal of providing clarity to the public while protecting the environment and public health. The agencies' experience has shown that the vast majority of waters where a significant nexus has been found, and which are therefore important to protect to achieve the goals of the Act, are located within the 4,000 foot boundary. Moreover, because of the unique status under the CWA of traditional navigable waters, interstate waters, and the territorial seas, the 100-year floodplain boundary for these waters provides another means of identifying on a case-specific basis those waters that significantly affect traditional navigable waters, interstate waters or the territorial seas. The agencies' balancing of these considerations is consistent with the statute and the Supreme Court opinions. The agencies decided that it is important to promulgate a rule that not only protects the most vital of our Nation's waters, but one that is practical and provides sufficient boundaries so that the public reasonably understands where CWA jurisdiction ends.

The agencies' decision to establish a provision that authorizes case-specific significant nexus analysis for waters within 4,000 feet is based on a number of factors. These waters may be located within the floodplain of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary. Section IV.G. and the Technical Support Document discuss

the importance of floodplain waters on the chemical, physical, and biological integrity of downstream traditional navigable waters, interstate waters, or the territorial seas. For purposes of clarity and to provide regulatory certainty, the agencies decided to use distance boundaries within the 100-year floodplain to define adjacency for floodplain waters. Under the rule, the only floodplain waters that are specifically identified as being jurisdictional as "adjacent" are those located in whole or in part within the 100-year floodplain and not more than 1,500 feet of the ordinary high water mark of jurisdictional waters.

Similarly, due to the many functions that waters located within 4,000 feet of the high tide line of a traditional navigable water or the territorial seas provide and their often close connections to the surrounding traditional navigable waters, science supports the agencies' determination that such waters are rightfully evaluated on a case-specific basis for significant nexus to a traditional navigable water or the territorial seas. Waters within 4,000 feet of the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary may fall within the riparian areas of such waters. As discussed in section IV.G., in response to comments regarding the uncertainty of the term "riparian area," the agencies removed the term from the definition of "neighboring." However, the agencies continue to recognize that science is clear that wetlands and open waters in riparian areas individually and cumulatively can have a significant effect on the chemical, physical, or biological integrity of downstream waters. Thus, the rule allows for a case-specific determination of significant nexus for waters located within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary.

The agencies have always recognized that adjacency is bounded by proximity, and the rule adds additional clarity to adjacency by bounding what can be considered neighboring. The science is clear that a water's proximity to downstream waters influences its impact on those waters. The Science Report states, "[s]patial proximity is one important determinant of the magnitude, frequency and duration of connections between wetlands and streams that will ultimately influence the fluxes of water, materials and biota between wetlands and downstream waters." Science Report at ES-11.

Generally, waters that are closer to a jurisdictional water are more likely to be connected to that water than waters that are farther away. A case-specific analysis for waters located within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary allows such waters to be considered jurisdictional only where they meet the significant nexus requirements. Even where not within a 100-year floodplain, waters within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary can have significant chemical, physical, and biological connections with traditional navigable waters, interstate waters, or the territorial seas.

As noted previously, in response to comments concerned that there were no bounds in the proposed rule on how far a surface hydrologic connection could be for purposes of adjacency, the agencies did not include surface hydrologic connections as its own factor for determining adjacency in the final rule. Such connections, however, are relevant in a case-specific significant nexus determination under paragraph (a)(8). For example, waters located within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary that contribute confined surface flow to a downstream water can have important hydrologic connections to and effects on that downstream water such as the attenuation and cycling of nutrients that would otherwise effect downstream water quality.

The agencies' decision to establish the case-specific provision at paragraph (a)(8), including the boundaries, was also informed by the knowledge that waters located within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary can have a confined surface or shallow subsurface connection to such a water. In order to provide the clarity and certainty that many commenters requested regarding "adjacent waters," the rule does not define "neighboring" to include all waters with confined surface or shallow subsurface connections.

However, the agencies recognize that the science demonstrates that waters with a confined surface or shallow subsurface connection to jurisdictional

waters can have important effects on downstream waters. For purposes of a case-specific significant nexus analysis under the rule, a shallow subsurface hydrologic connection is lateral water flow over a restricting layer in the top soil horizons, or a shallow water table which fluctuates within the soil profile, sometimes rising to or near the ground surface. In addition, water can move within confined man-made subsurface conveyance systems such as drain tiles and storm sewers, and in karst topography. Confined subsurface systems can move water, and potential contaminants, directly to surface waters and rapidly without the opportunity for nutrient or sediment reduction along the pathway.

Shallow subsurface connections move quickly through the soil and impact surface water directly within hours or days rather than the years it may take long pathways to reach surface waters. See Technical Support Document. Tools to assess shallow subsurface flow include reviewing the soils information from the NRCS Soil Survey, which is available for nearly every county in the United States. When assessing whether a water within the 4,000 foot boundary performs any of the functions identified in the rule's definition of significant nexus, the significant nexus determination can consider whether shallow subsurface connections contribute to the type and strength of functions provided by a water or similarly situated waters. However, neither shallow subsurface connections nor any type of groundwater, shallow or deep, are themselves "waters of the United States."

The proposed rule did not set a distance threshold for case-specific waters to be evaluated for a significant nexus. Some commenters argued that there should be a limitation on areas subject to case-specific analysis while others contended that the agencies lack discretion to set regulatory limits that would exclude from jurisdiction *any* water meeting the significant nexus test. The agencies disagree that the agencies lack the authority to establish reasonable boundaries to determine what areas are subject to case-specific significant nexus analysis. Nothing in the CWA or case law mandates that the agencies require every water feature in the nation be subject to analysis for significant nexus. The Supreme Court has made clear that the agencies have the authority and responsibility to determine the limits of CWA jurisdiction, and establishing boundaries based on agency judgment, expertise and experience in

administering the statute is at the core of the agencies authority and discretion.

After weighing the scientific information about these waters' connectivity and importance to protecting downstream waters, the agencies' considerable experience making jurisdictional determinations, the objective of enhancing regulatory clarity and consistent with the statute and the caselaw, the agencies decided to set a boundary of 4,000 feet for case-specific significant nexus analysis for waters that do not otherwise meet the requirements of paragraphs (a)(1) through (a)(7). Tying this provision for case-specific significant nexus analysis to distance informed by the science, and the agencies' experience and expertise, as spatial proximity is a key contributor to connectivity among waters. Science Report at ES-11. Distance is by no means the sole factor, and aquatic functions will play a prominent role in determining whether specific waters covered under this aspect of paragraph (a)(8) have a significant nexus. In light of the role spatial proximity plays in connectivity and the objective of enhancing regulatory clarity, predictability and consistency, the agencies conclude that establishing a boundary for this aspect of waters subject to case-specific significant nexus analysis based on distance is reasonable.

While, for purposes of this national rule, distance is a reasonable and appropriate measure for identifying where this case-specific significant nexus analysis will be conducted, the science does not point to any particular bright line delineating waters that have a significant nexus from those that do not. The Science Report concluded that connectivity of streams and wetlands to downstream waters occurs along a gradient. The evidence unequivocally demonstrates that the stream channels and floodplain wetlands or open waters that together form river networks are clearly connected to downstream waters in ways that profoundly influence downstream water integrity. The connectivity and effects of non-floodplain wetlands and open waters are more variable and thus more difficult to address solely from evidence available in peer-reviewed studies. Science Report at ES-5. Because of this variability, with respect to waters that are not covered by paragraphs (a)(1) through (a)(7) of the rule, the science does not provide a precise point along the continuum at which waters provide only speculative or insubstantial functions to downstream waters.

Like connectivity itself, there is also a continuum of outcomes associated with picking a distance threshold. A

smaller threshold increases the likelihood that waters that could have a significant nexus will not be analyzed and therefore not subject to the Act; a larger threshold reduces that possibility, but also means that agency and the public's resources are expended conducting significant nexus analyses on waters that have a lower likelihood of meriting the Act's protection.

Recognizing that there is no optimal line, in selecting both the 100-year floodplain for and the 4,000 foot boundaries the agencies looked principally to the extensive experience the Corps has gained in making significant nexus determinations since the *Rapanos* decision. As noted in Section III above, since the *Rapanos* decision, the agencies have developed extensive experience making significant nexus determinations, and that experience and expertise informed the judgment of the agencies in establishing both the 100-year floodplain boundary and the 4,000 foot boundary. The agencies have made determinations in every state in the country, for a wide range of waters in a wide range of conditions. The vast majority of the waters that the Corps has determined have a significant nexus are located within 4,000 feet of a jurisdictional tributary, traditional navigable or interstate water, or the territorial seas. Therefore, the agencies conclude that the 100-year floodplain and 4,000 foot boundaries in the rule will sufficiently capture for analysis those waters that are important to protect to achieve the goals of the Clean Water Act.

The agencies acknowledge that, as with any meaningful boundary, some waters that could be found jurisdictional lie beyond the boundary and will not be analyzed for significant nexus. The agencies minimize that risk by also establishing a provision in paragraph (a)(8) for case-specific significant nexus analysis of waters located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas. While in the agencies' experience the vast majority of wetlands with a significant nexus are located within the 4,000 foot boundary, it is the agencies' experience that there are a few waters that have been determined to be jurisdictional that are located beyond this boundary, typically due to a surface or shallow subsurface hydrologic connections. Nonetheless, the agencies have weighed these considerations and concluded that the value of enhancing regulatory clarity, predictability and consistency through a distance limit outweigh the likelihood that a distinct minority of waters that might be shown

to meet the significant nexus test will not be subject to analysis. In the agencies' experience, requiring an evaluation of significant nexus for waters covered by paragraph (a)(8) should capture the vast majority of waters having a significant nexus to the downstream waters. The agencies therefore conclude that that adoption of the 4,000 foot boundary is reasonable.

The rule's requirements for these waters, coupled with those for "adjacent waters," create an integrated approach that tailors the regulatory regime based on the science and the agencies' policy objectives. Determining by rule that covered adjacent waters have a significant nexus follows the science, achieves regulatory clarity and predictability, and avoids expenditure of agency and public resources on case-specific significant nexus analysis. Similarly, providing for case-specific significant nexus analysis for waters that are not adjacent but within the 4,000 foot distance limit, as well as those within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, is consistent with science and agency experience, will ensure protection of the important waters whose protection will advance the goals of the Clean Water Act, and will greatly enhance regulatory clarity for agency staff, regulated parties, and the public.

For these reasons, the agencies decided to allow case-specific determinations of significant nexus for waters located within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas and for waters located within 4,000 feet of the high tide line or the ordinary high water mark of a traditional navigable water, an interstate water, the territorial seas, an impoundment, or a covered tributary. Under the rule, these waters are jurisdictional only where they individually or cumulatively (if it is determined that there are other similarly situated waters) have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas. Additional scientific and policy rationale for including such waters as waters that can be evaluated on a case-specific basis can be found in the Technical Support Document.

The agencies emphasize that they fully support efforts by States and tribes to protect under their own laws any additional waters, including locally special waters that may not be within the jurisdiction of the CWA as the agencies have interpreted its scope in this rule. Indeed, the promulgation of the 100-year floodplain and 4000 foot boundaries for purposes of a case-

specific analysis of significant nexus does not foreclose states from acting consistent with their state authorities to establish protection for waters that fall outside of the protection of the CWA. In promulgating the 4,000 foot boundary, the agencies have balanced protection and clarity, scientific uncertainties and regulatory experience, and established a line that is, in their judgment, reasonable and consistent with the statute and its goals and objectives.

3. Case-Specific Significant Nexus Determinations

Only waters identified in paragraphs (a)(7) or (a)(8) of the rule require a case-specific determination of significant nexus. This section discusses the definition of significant nexus in the rule and how the agencies will make case-specific significant nexus determinations under the rule.

a. Definition of Significant Nexus

Paragraph (c)(5) of the rule defines the term "significant nexus" to mean a significant effect (more than speculative or insubstantial) on the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas. Waters, including wetlands, are evaluated either alone, or in combination with other similarly situated waters in the region, based on the functions the evaluated waters perform. Functions to be considered for the purposes of determining significant nexus are sediment trapping, nutrient recycling, pollutant trapping, transformation, filtering and transport, retention and attenuation of floodwaters, runoff storage, contribution of flow, export of organic matter, export of food resources, and provision of life-cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in traditional navigable waters, interstate waters, or the territorial seas.

The agencies' definition of significant nexus is based upon the language in *SWANCC* and *Rapanos*. The definition is also consistent with current practice, where field staff evaluate the functions of the waters in question and the effects of these functions on downstream waters. In order to add clarity and transparency to the definition of significant nexus, the agencies have listed in the definition the functions that will be considered in a significant nexus analysis. These functions are consistent with the agencies' scientific understanding of the functioning of aquatic ecosystems. A water does not need to perform all of the functions listed in paragraph (c)(5) in order to

have a significant nexus. Depending upon the particular water and the functions it provides, if a water, either alone or in combination with similarly situated waters, performs just one function, and that function has a significant impact on the integrity of a traditional navigable water, interstate water, or the territorial seas, that water would have a significant nexus.

Case-specific determinations of significant nexus require paragraph (a)(7) or (a)(8) waters to be evaluated either alone, or in combination with other similarly situated waters in the region. In the rule, the agencies interpret the phrase "in the region" to mean the watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas through a single point of entry. See Section III. In circumstances where the single point of entry watershed includes waters that are identified under paragraph (a)(7) and waters that are subject to analysis under paragraph (a)(8), those waters will be analyzed separately under the provisions of those paragraphs.

In a case-specific analysis of significant nexus, the agencies determine whether the water they are evaluating, in combination with other similarly situated waters in the region, has a significant effect on the chemical, physical, or biological integrity of the nearest traditional navigable water, interstate water, or the territorial seas. As noted previously, the agencies evaluate the listed functions in paragraph (c)(5) as part of that evaluation to determine if the water has an impact that is more than speculative or insubstantial.

b. Conducting Case-Specific Significant Nexus Determinations Under Paragraphs (a)(7) and (a)(8)

The significant nexus analysis for waters assessed under paragraphs (a)(7) and (a)(8) is a three-step process: First, the region for the significant nexus analysis must be identified—under the rule, it is the watershed which drains to the nearest traditional navigable water, interstate water or territorial sea; second, any similarly situated waters must be identified—under the rule, that is waters that function alike and are sufficiently close to function together in affecting downstream waters; and third, the waters are evaluated individually or in combination with any identified similarly situated waters in the single point of entry watershed to determine if they significantly impact the chemical, physical or biological integrity of the traditional navigable water, interstate water or the territorial seas.

i. "In the Region"—The Point of Entry Watershed

As discussed in Section III of the preamble and established in the definition of "significant nexus," the region for purposes of a significant nexus analysis is the watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas. The first step of the analysis is to identify the point of entry watershed that the water being evaluated under paragraphs (a)(7) or (a)(8) drains to. This point of entry approach identifies the nearest traditional navigable water, interstate water, or the territorial seas that the water being evaluated and any similarly situated waters flow to and delineates the watershed of that nearest traditional navigable water, interstate water, or the territorial seas. The point of entry watershed is the area drained by the nearest traditional navigable water, interstate water, or the territorial seas and is typically defined by the topographic divides between one traditional navigable water, interstate water, or the territorial seas and another.

Available mapping tools, such as those that are based on the NHD, topographic maps, and elevation data, can be used to demarcate boundaries of the single point of entry watershed. As discussed in Section III and in the Technical Support Document, the single point of entry watershed represents the scientifically appropriate sized area for conducting a case-specific significant nexus evaluation in most cases.

In the arid West, the agencies recognize there may be situations where the single point of entry watershed is very large, and it may be reasonable to evaluate all similarly situated waters in a smaller watershed. Under those circumstances, the agencies may demarcate adjoining catchments surrounding the water to be evaluated that, together, are generally no smaller than a typical 10-digit hydrologic unit code (HUC-10) watershed in the same area. The area identified by this combination of catchments would be the "region" used for conducting a significant nexus evaluation under paragraphs (a)(7) or (a)(8) under those situations. The basis for such an approach in very large single point of entry watersheds in the arid West should be documented in the jurisdictional determination.

ii. "Similarly Situated"

Second, the agencies determine if the water or waters to be evaluated are similarly situated. The waters identified in paragraph (a)(7) are similarly situated

by rule and shall be combined with other waters of the same category located in the same watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas with no need for a case-specific similarly situated finding. Under paragraph (a)(7), only waters of the same subparagraph in the point of entry watershed can be considered as similarly situated. For example, only pocosins may be evaluated with other pocosins in the same point of entry watershed. Pocosins in different point of entry watersheds cannot be combined, and pocosins cannot be combined with Carolina bays under paragraph (a)(7), even where they occur in the same point of entry watershed.

Unlike waters evaluated under paragraph (a)(7), the waters specified at paragraph (a)(8) require a determination whether they are similarly situated. Under this step, the agencies apply factors in the determination of when waters evaluated under paragraph (a)(8) should be considered either individually or in combination for purposes of a significant nexus analysis. A determination of "similarly situated" requires an evaluation of whether a group of waters in the region that meet the distance thresholds set out under paragraph (a)(8) can reasonably be expected to function together in their effect on the chemical, physical, or biological integrity of downstream traditional navigable waters, interstate waters, or the territorial seas.

Similarly situated waters can be identified as sufficiently close together for purposes of this paragraph of the regulation when they are within a contiguous area of land with relatively homogeneous soils, vegetation, and landform (e.g., plain, mountain, valley, etc.). In general, it would be inappropriate, for example, to consider waters as "similarly situated" under paragraph (a)(8) if these waters are located in different landforms, have different elevation profiles, or have different soil and vegetation characteristics, unless the waters perform similar functions and are located sufficiently close to a "water of the United States" to allow them to consistently and collectively function together to affect a traditional navigable water, interstate water, or the territorial seas. In determining whether waters under paragraph (a)(8) are sufficiently close to each other the agencies will also consider hydrologic connectivity to each other or a jurisdictional water.

In determining whether groups of waters under paragraph (a)(8) perform "similar functions" the agencies will consider functions such as habitat,

water storage, sediment retention, and pollution sequestration. In addition, consideration of wetland/water type and landscape location are relevant for determining if the waters are similarly situated. For example, Texas coastal sand sheet wetlands that form a complex of wetlands with other wetlands of the same type on the landscape and are densely located may very well be similarly situated and considered in combination with other Texas coastal sand sheet wetlands in the same single point of entry watershed. However, under paragraph (a)(8), waters do not need to be of the same type (as they do in paragraph (a)(7)) to be considered similarly situated. As described above, waters are similarly situated under paragraph (a)(8) where they perform similar functions or are located sufficiently close to each other, regardless of type. The agencies will consider the hydrologic, geomorphic, and ecological characteristics and circumstances of the waters under consideration. Examples include: Documentation of chemical, physical, or biological interactions of the similarly situated waters; aerial photography; USGS and state and local topographical or terrain maps and information; NRCS soil survey maps and data; other available geographic information systems (GIS) data; National Wetlands Inventory maps where wetlands meet the CWA definition; and state and local information. The evaluation will use any available site information and pertinent field observations where available, relevant scientific studies or data, or other relevant jurisdictional determinations that have been completed in the region.

Only those waters that do not meet the requirements in paragraph (a)(1) through (a)(6) are to be considered in case-specific significant nexus determinations; subcategory waters that meet the provisions in paragraph (a)(1) through (a)(6) are *per se* jurisdictional without the need for a significant nexus determination. For example, waters that are identified under paragraph (a)(6) are adjacent and are not subject to a case-specific significant nexus evaluation under paragraph (a)(7) or (a)(8). Waters evaluated under paragraph (a)(7) cannot be combined with waters identified in paragraph (a)(6) or (a)(8), and waters evaluated under paragraph (a)(8) cannot be combined with waters identified in paragraph (a)(6) or (a)(7). For example, Prairie potholes being evaluated under paragraph (a)(7) may not be combined with Prairie potholes that are *per se* jurisdictional under paragraph (a)(6) that meet the definition

of adjacent. When a water meets the specifications at both paragraphs (a)(7) and (a)(8), it can only be evaluated under paragraph (a)(7). That is, for example, if a wetland is a Western vernal pool and is also within 4,000 feet of the ordinary high water mark of a covered tributary, it can only be assessed for significant nexus under paragraph (a)(7) in combination with other Western vernal pools in the point of entry watershed. Unlike paragraph (a)(8), there is no distance threshold for waters evaluated under paragraph (a)(7)—that is, waters in the paragraph (a)(7) subcategories that are more than 4,000 feet from the high tide line or the ordinary high water mark of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary or are beyond the 100-year floodplain of an traditional navigable water, interstate water, or the territorial seas are to be included in combination in a significant nexus analysis.

iii. Significant Nexus Analysis for Paragraph (a)(7) and (a)(8) Waters

Third, the agencies evaluate waters individually or in combination with any identified similarly situated waters in the single point of entry watershed to determine if they significantly impact the chemical, physical, or biological integrity of the traditional navigable water, interstate water, or the territorial seas. For purposes of determining significant nexus under paragraph (a)(7), all waters of the specified subcategory are to be considered in combination in the point of entry watershed, as those waters are similarly situated. For purposes of determining significant nexus under paragraph (a)(8), depending on the results of step two, a water within the boundaries in paragraph (a)(8) is evaluated either alone or in combination with other similarly situated waters in the region. For example, in the case where the agencies have determined that a particular water under paragraph (a)(8) is not similarly situated, it is evaluated individually for significant nexus; the water cannot be aggregated if it is not similarly situated with other such waters.

The analysis will include an evaluation of the functions listed in paragraph (c)(5) of the rule, which defines significant nexus. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest traditional

navigable water, interstate water, or the territorial seas. A water may be determined to have a significant nexus based on performing any of the following functions: sediment trapping, nutrient recycling, pollutant trapping, transformation, filtering, and transport, retention and attenuation of floodwaters, runoff storage, contribution of flow, export of organic matter, export of food resources, or provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a traditional navigable water, interstate water, or the territorial seas.

For purposes of paragraph (c)(5)(ix), a species is located in a traditional navigable water, interstate water, or the territorial seas if such a water is a typical type of habitat for at least part of the life cycle of the species. For example, amphibians and many reptiles can use a traditional navigable water, interstate water, or the territorial seas for part of their life cycle needs.

When evaluating a water individually or in combination with other similarly situated waters for the presence of a significant nexus to a traditional navigable water, interstate water, or the territorial seas, a variety of factors will influence the chemical, physical, or biological connections the water has with the downstream traditional navigable water, interstate water, or the territorial seas, including distance from a jurisdictional water, the presence of surface or shallow subsurface hydrologic connections, and density of waters of the same type (if it has been concluded that such waters can be evaluated in combination). The likelihood of a significant connection is greater with increasing size and decreasing distance from the identified traditional navigable water, interstate water, or the territorial seas, as well as with increased density of the waters for such waters that can be considered in combination as similarly situated waters. In addition, the presence of a surface or shallow subsurface hydrologic connection can influence the impact that a water has with downstream waters.

In many cases, the presence of a hydrologic connection increases the strength of the impact of the downstream traditional navigable water, interstate water, or the territorial seas. However, a hydrologic connection is not necessary to establish a significant nexus, because, as Justice Kennedy stated, in some cases the lack of a hydrologic connection would be a sign of the water's function in relationship to the traditional navigable water,

interstate water, or the territorial seas. These functional relationships include retention of floodwaters or pollutants that would otherwise flow downstream to the traditional navigable water, interstate water, or the territorial seas. See 547 U.S. at 775 (citations omitted) (J. Kennedy) (“it may be the absence of an interchange of waters prior to the dredge and fill activity that makes protection of the wetlands critical to the statutory scheme”). The Science Report concludes, “[s]ome effects of non-floodplain wetlands on downstream waters are due to their isolation, rather than their connectivity. Wetland ‘sink’ functions that trap materials and prevent their export to downstream waters (e.g., sediment and entrained pollutant removal, water storage) result because of the wetland’s ability to isolate material fluxes.” Science Report at ES-4. For example, a report that reviewed the results of multiple scientific studies concluded that depressional wetlands lacking a surface outlet functioned together to significantly reduce or attenuate flooding. See Science Report and Technical Support Document. Even when they lack a surface hydrologic connection to downstream traditional navigable waters, interstate waters, or the territorial seas, Prairie potholes, for instance, cumulatively can store large volumes of water, impacting streamflow and reducing flooding downstream, and several studies have quantified the large storage capacity of Prairie pothole complexes. This water storage function is estimated to hold tens of millions of cubic meters of water, including for example Prairie potholes located in the watersheds of Devils Lake and the Red River of the North, which have both had a long history of flooding. Where Prairie potholes lack a surface hydrologic connection, this water storage capacity is particularly effective in reducing downstream flooding and can have a significant effect on downstream traditional navigable waters, interstate waters, or the territorial seas. Thus, even when lacking a surface hydrologic connection, a water can still have a significant effect on the chemical or the biological integrity of downstream traditional navigable waters, interstate waters, or the territorial seas.

The rule recognizes that not all waters have the requisite connection to traditional navigable waters, interstate waters, or the territorial seas sufficient to be determined jurisdictional. Waters with a significant nexus must significantly affect the chemical, physical, or biological integrity of a downstream traditional navigable water,

interstate water, or the territorial seas, and the requisite nexus must be more than "speculative or insubstantial." *Rapanos* at 780.

Evidence of chemical connectivity and the effect on waters can be found by identifying the properties of the water in comparison to the identified traditional navigable water, interstate water, or the territorial seas; signs of retention, release, or transformation of nutrients or pollutants; and the effect of landscape position on the strength of the connection to the nearest "water of the United States," and through it to a traditional navigable water, interstate water, or the territorial seas. In addition, relevant factors influencing chemical connectivity include hydrologic connectivity (see physical factors, below), surrounding land use and land cover, the landscape setting, and deposition of chemical constituents (e.g., acidic deposition).

Evidence of physical connectivity and the effect on traditional navigable waters, interstate waters, or the territorial seas can be found by identifying evidence of physical connections, such as flood water or sediment retention (flood prevention). Presence of indicators of hydrologic connections between the other water and jurisdictional water are also indicators of a physical connection. Factors influencing physical connectivity include rain intensity, duration of rain events or wet season, soil permeability, and distance of hydrologic connection between the paragraph (a)(7) or (a)(8) water and the traditional navigable water, interstate water, or the territorial seas, depth from surface to water table, and any preferential flowpaths.

Evidence of biological connectivity and the effect on waters can be found by identifying: Resident aquatic or semi-aquatic species present in the case-specific water and the tributary system (e.g., amphibians, aquatic and semi-aquatic reptiles, aquatic birds); whether those species show life-cycle dependency on the identified aquatic resources (foraging, feeding, nesting, breeding, spawning, use as a nursery area, etc.); and whether there is reason to expect presence or dispersal around the case-specific water, and if so whether such dispersal extends to the tributary system or beyond or from the tributary system to the case-specific water. Factors influencing biological connectivity include species' life history traits, species' behavioral traits, dispersal range, population size, timing of dispersal, distance between the case-specific water and a traditional navigable water, interstate water, or the

territorial seas, the presence of habitat corridors or barriers, and the number, area, and spatial distribution of habitats. Non-aquatic species or species such as non-resident migratory birds do not demonstrate a life cycle dependency on the identified aquatic resources and are not evidence of biological connectivity for purposes of this rule.

For practical administrative purposes, the rule does not require evaluation of all similarly situated waters under paragraph (a)(7) or (a)(8) when concluding that those waters have a significant nexus to a traditional navigable water, interstate water, or territorial sea. When a subset of similarly situated waters provides a sufficient science-based justification to conclude presence of a significant nexus, for efficiency purposes a significant nexus analysis need not unnecessarily require time and resources to locate and analyze all similarly situated waters in the entire point of entry watershed. For example, if a single Carolina bay or a group of Carolina bays in a portion of the point of entry watershed is determined to significantly affect the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas, the analysis does not have to document all of the similarly situated Carolina bays in the watershed in order to conduct the significant nexus analysis. A conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water.

While the rule is clear that waters that are jurisdictional by rule cannot be combined with waters subject to a case-specific significant nexus analysis, the analysis may appropriately include the evaluation of functions of paragraph (a)(8) waters that reach covered waters through paragraph (a)(6) waters without consideration of the functions contributed by those paragraph (a)(6) waters. The hydrologic connections between paragraph (a)(8) waters and a covered tributary and eventually to a traditional navigable water, interstate water, or the territorial seas, can often occur through an adjacent water. This hydrologic connection is an appropriate part of the case-specific analysis as to whether the paragraph (a)(8) waters, alone or in combination with any similarly situated paragraph (a)(8) waters in the point of entry watershed, provide those functions downstream such that they significantly affect the chemical, physical or biological

integrity of the traditional navigable water, interstate water, or the territorial seas. For example, when evaluating a wetland that is 2,500 feet from the ordinary high water mark of an paragraph (a)(5) water and that has surface or shallow subsurface connections to downstream traditional navigable waters, interstate waters, or the territorial seas via a wetland that is adjacent to an paragraph (a)(4) water, the existence of those connections is not ignored. However, while a water's connections to the traditional navigable water, interstate water, or the territorial seas through paragraph (a)(5) through (a)(7) waters can be considered in the significant nexus analysis in order to determine whether the functions of the paragraph (a)(8) waters are provided downstream, only the functions of the water, along with any similarly situated waters, being evaluated under paragraph (a)(8) on downstream water integrity can be included in the significant nexus analysis.

The administrative record for a jurisdictional determination for a water under paragraph (a)(7) or (a)(8) will include available information supporting the determination. In addition to location and other descriptive information regarding the water at issue, the record will include an explanation of the rationale for the jurisdictional conclusion and a description of the information used. Relevant information can come from many sources, and need not always be specific to the water whose jurisdictional status is being evaluated. Studies of the same type of water or similarly situated waters can help to inform a significant nexus analysis as long as they are applicable to the water being evaluated. In the case of paragraph (a)(8) waters, the administrative record will include the rationale behind the similarly situated analysis, including an explanation of the data or information examined.

The agencies expect that where waters are determined to be similarly situated in a single point of entry watershed, such similarly situated waters will often be found jurisdictional through the case-specific analysis of significant nexus. However, case-specific factors such as distance to the traditional navigable water, interstate water, or the territorial seas; density or number of similarly situated waters; individual and cumulative size of the similarly situated waters; soil permeability; climate; etc., may be considered in the determination, and there could be cases where even considering these waters in combination with similarly situated waters will not

be sufficient for waters to have a significant nexus.

Within a single point of entry watershed, over a period of time there will likely be multiple jurisdictional determinations. For paragraph (a)(7) waters, if a case-specific significant nexus determination has been made in the point of entry watershed, all waters in the subcategory in the point of entry watershed are jurisdictional. For paragraph (a)(8) waters, the case-specific significant nexus analyses must use information used in previous jurisdictional determinations, and if a significant nexus has been established for one water in the watershed, then other similarly situated waters in the watershed would also be found to have a significant nexus. This is because under Justice Kennedy's test, similarly situated waters in the region should be evaluated together. A positive significant nexus determination would then apply to all similarly situated waters within the point of the watershed. A negative case-specific significant nexus evaluation under paragraph (a)(7) or (a)(8) of all similarly situated waters in the point of entry watershed applies to all similarly situated waters in that watershed. However, as noted above, a conclusion that significant nexus is lacking may not be based on consideration of a subset of similarly situated waters, because under the significant nexus standard the inquiry is how the similarly situated waters in combination affect the integrity of the downstream water. The documentation for each case should be complete enough to support the specific jurisdictional determination, including an explanation of which waters were considered together as similarly situated and in the same region.

4. Summary of Revisions to Case-Specific Determinations of "Waters of the United States" and Major Comments

a. Significant Nexus

Some commenters stated concerns over the potential for inconsistent application of the significant nexus analysis in a jurisdictional determination. To address this concern within the regulatory framework, the agencies provide more detail regarding the definition of significant nexus in the rule and list the specific functions that will be considered in the analysis. This approach provides individual regulators who conduct the analysis clear and consistent parameters that they will consider during their review in making jurisdictional determinations and provides transparency to the regulated

public over which factors will be considered.

Overall, there was support for the concept of the single point of entry watershed as the interpretation of "in the region." Several commenters supported the approach that the single point of entry watershed was an appropriate scale to use to measure effect on traditional navigable waters, interstate waters, or the territorial seas. Other commenters felt the single point of entry watershed was too small to capture all the benefits that waters that do not meet the definition of adjacency contribute. Some of the SAB panel members thought that because surface and ground-watershed units may not align, watersheds might be problematic for defining "in the region." These panel members suggested that a more scientifically justified approach would include surface and subsurface waters in a watershed delineation. The agencies have retained the single point of entry watershed from the proposed rule as the appropriate unit of analysis for significant nexus in the final rule as these watersheds are more easily understood and easier to delineate than those that map subsurface waters as the SAB suggested.

With respect to the agencies' approach to "similarly situated waters," commenters offered support for assessing waters in combination based on their type and function, particularly waters such as Prairie potholes. Conversely, several commenters found that the ability to aggregate waters that do not meet the definition of adjacency is over-reaching and causes uncertainty to the regulated public. Some commenters also attributed uncertainty in which waters were regulated to subjectivity in review by Federal regulator(s). Similarly, some commenters were concerned that waters eligible for protection were based on an individual analyst's interpretation and wanted to know how the agencies would address consistency and potential bias. In response, the rule lists in paragraph (a)(7) a limited number of subcategories of waters where waters of the specified types have been determined by rule to be similarly situated for a significant nexus analysis. This will add consistency, predictability, and clarity, as the rule explicitly states that such waters are similarly situated for purposes of the significant nexus analysis. For waters identified under paragraph (a)(8), the agencies have established two limitations: Waters within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, and waters within 4,000 foot feet

of a traditional navigable water, interstate water, the territorial seas, impoundment, or covered tributary. The agencies also have established within the definition of significant nexus at paragraph (c)(5) criteria for determining whether waters are similarly situated and should therefore be analyzed in combination. Waters identified under paragraph (a)(8) are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. The agencies have not determined that such waters are categorically similarly situated, so the agencies will base their case-specific determinations of whether a particular water has any similarly situated waters on the available information and science. The rule also clarifies that paragraph (a)(8) waters cannot be considered similarly situated with "adjacent waters," which are jurisdictional by rule, and paragraph (a)(7) waters, which have been determined to be similarly situated by rule. These parameters will reduce inconsistency in reviews and add clarity.

Similarly, several commenters expressed concern that landowners would not know which water bodies on their property are subject to CWA jurisdiction due to aggregation, as waters on their property may be considered similarly situated with waters located off-site. While the rule does not eliminate the use of case-specific significant nexus analyses, and the concern arises from Justice Kennedy's phrase "similarly situated," the parameters placed on waters requiring a case-specific determination and the clearer definition of significant nexus address the concerns about uncertainty and inconsistencies in reviews. In particular, waters that are not either one of the five identified subcategories in paragraph (a)(7) or within the thresholds in paragraph (a)(8) cannot be subject to a case-specific significant nexus analysis under the rule. Generally, jurisdictional determinations are conducted at the request of an applicant or landowner for specific waters. While the agencies cannot arbitrarily depart from a determination that waters are "similarly situated," landowners may provide new information to inform subsequent jurisdictional determinations. In addition, owners with questions regarding jurisdiction of waters on their property may always consult their local Corps District or EPA Regional Office, which is not a change from longstanding practice.

b. Case-Specific Determinations

The rule provides more regulatory certainty by narrowing the scope of waters that can be assessed under a case-specific significant nexus evaluation as compared to the proposal. These changes still allow the scientific value of specific waters not covered in paragraph (a)(1) through (a)(6) to be evaluated on a case-specific basis.

In the proposal, the agencies solicited comment regarding a variety of approaches to the category of waters subject to a case-specific significant nexus analysis. In addition, the agencies solicited comment on additional scientific research and data that might further inform decisions about these waters. In particular the agencies solicited information about whether current scientific research and data regarding particular types of waters are sufficient to support the inclusion of subcategories of types of waters, either alone or in combination with similarly situated waters, that can appropriately be identified as always lacking or always having a significant nexus. One of these alternate approaches in the preamble to the proposed rule was to determine by rule that certain additional subcategories of waters would be jurisdictional rather than addressed with a case-specific basis for determining significant nexus.

Many commenters expressed support for the agencies' proposed approach to case-specific waters, included additional references to support these waters being protected by rule, and supported the treatment of certain categories of waters as similarly situated (that is, evaluating them in combination with similarly situated waters for the purposes of the significant nexus analysis). Some suggested the agencies establish jurisdiction over case-specific waters by rule and provided detailed information in support of their position. Other commenters suggested additional subcategories of waters be considered as jurisdictional or as similarly situated by rule, such as playa lakes, kettle lakes, and woodland vernal pools.

However, there was a concern raised by other commenters about what was termed regulatory overreach and uncertainty created by the "other waters" category in the proposal. Some commenters stated that the "other waters" category in the proposal would allow the agencies to regulate virtually any water. To address this concern, the rule places limits on which waters could be subject to a case-specific significant nexus determination, in recognition that case-specific analysis of significant nexus is resource-intensive

and based on the body of science that exists. As noted above, the agencies also establish by rule subcategories of waters that are "similarly situated" for the purposes of a significant nexus analysis because science supports that the subcategory waters fall within a higher gradient of connectivity. By not determining that any one of the waters available for case-specific analysis is jurisdictional by rule, the agencies are recognizing the gradient of connectivity that exists and will assert jurisdiction only when that connection and the downstream effects are significant and more than speculative and insubstantial.

Waters are covered under the rule only where they are identified as jurisdictional in paragraphs (a)(1) through (a)(6), where they are not excluded under paragraph (b), or where they are within the limited number of subcategories listed in paragraphs (a)(7) and (a)(8) and have a case-specific significant nexus to a traditional navigable water, interstate water, or the territorial seas. These limits on jurisdiction reflect the case law and are in response to comments requesting greater regulatory certainty. Although some commenters suggested additional subcategories of waters for consideration, such as playa lakes and kettle lakes, the agencies at this time are not able to determine that the available science supports that the suggested additional subcategories of waters as a class have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas. However, to be clear, under the rule, individual waters of the suggested additional subcategories are jurisdictional where they meet the requirements of paragraphs (a)(1) through (a)(6) or (a)(8) (e.g., a playa lake that is an interstate water, a kettle lake that is an adjacent water, or a woodland vernal pool that is less than 4,000 feet from a jurisdictional tributary and is determined on a case-specific basis to have a significant nexus to a traditional navigable water, interstate water, or the territorial seas).

In consideration of the variety of views of the commenters, the Science Report, the input from the SAB, and the developing state of the science, the agencies reasonably decided not to establish jurisdiction over all waters that do not meet the requirements of paragraph (a)(1) through (a)(6) by rule. Instead, the agencies established case-specific provisions for some specified waters at paragraph (a)(7) and waters within the boundaries at paragraph (a)(8). This approach strikes a balance between requests for clear boundaries and limited case-specific reviews with scientific support.

I. Waters and Features That Are Not "Waters of the United States"

In the rule, the agencies identify a variety of waters and features that are not "waters of the United States." Prior converted cropland and waste treatment systems have been excluded from this definition since 1992 and 1979, respectively, and they remain substantively and operationally unchanged. Only ministerial changes to delete an outdated cross reference are made to the exclusion for waste treatment systems. The agencies add exclusions for all waters and features identified as generally exempt in preamble language from **Federal Register** documents by the Corps on November 13, 1986, and by EPA on June 6, 1988. This is the first time these exclusions have been established by rule. In addition, under prior preamble language, the agencies retained the authority to determine that a particular feature generally considered non-jurisdictional was in fact a "water of the United States." The agencies do not retain that authority for features excluded under the rule. The agencies for the first time also establish by rule that certain ditches are excluded from jurisdiction. The agencies add exclusions for groundwater and erosional features, as well as exclusions for some waters that were identified in public comments as possibly being found jurisdictional under proposed rule language where this was never the agencies' intent. These exclusions are reflective of current agencies' practice, and their inclusion in the rule furthers the agencies' goal of providing greater clarity over what waters are and are not protected under the CWA. Importantly, under the rule all waters and features identified in paragraph (b) as excluded will not be "waters of the United States," even if they otherwise fall within one of the categories in paragraphs (a)(4) through (a)(8). For example, a ditch that is excluded under paragraph (b)(3)(i) or (b)(3)(ii) is not jurisdictional even when the ditch connects directly or through another water to a traditional navigable water, interstate water, or the territorial seas. The proposed rule referenced paragraphs (a)(1) through (a)(8), but the agencies did not intend to exclude any traditional navigable waters, for example, and the revision clarifies that. Finally, nothing in the rule is intended to change the way in which the Corps applies individual or nationwide permits.

The exclusions reflect the agencies' long-standing practice and technical judgment that certain waters and

features are not subject to the CWA. The exclusions are also guided by Supreme Court cases. The significant nexus standard arises from the case law and is used to interpret the terms of the CWA. Thus, a significant nexus determination is not a purely scientific inquiry, but rather is a determination by the agencies in light of the statutory language, the statute's goals, objectives and policies, the case law, the relevant science, and the agencies' technical expertise and experience. The plurality opinion in *Rapanos* also noted that there were certain features that were not primarily the focus of the CWA. See 547 U.S. at 734. In this section of the proposed rule, the agencies are drawing lines and concluding that certain waters and features are not subject to the jurisdiction of the Clean Water Act. The Supreme Court has recognized that clarifying the lines of jurisdiction is a difficult task: "Our common experience tells us that this is often no easy task: The transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs—in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of 'waters' is far from obvious." *Riverside Bayview* at 132–33. The exclusions are an important aspect of the agencies' policy goal of providing clarity and certainty. Just as the categorical assertions of jurisdiction over covered tributaries and covered adjacent waters simplify the jurisdiction issue, the categorical exclusions will likewise simplify the process, and they reflect the agencies' determinations of the lines of jurisdiction based on science, the case law and the agencies' experience and expertise.

The existing exclusion for waste treatment systems moves to paragraph (b)(1) with no substantive changes. One ministerial change is the deletion of a cross-reference in the current language to an EPA regulation that no longer exists. Because the agencies are not addressing the substance of the exclusion, the agencies do not make conforming changes to ensure that each of the existing definitions of the "waters of the United States" for the various CWA programs have the exact same language with respect to the waste treatment system exclusion, with the exception of deleting the cross-reference.

Many commenters expressed concern about whether the agencies' insertion of a comma following this ministerial change unintentionally narrowed the

exclusion such that all excluded waste treatment systems must be designed to meet the requirements of the Clean Water Act. The commenters indicated concerns that waste treatment systems built before the Clean Water Act or primarily for purposes of other environmental laws could not be exempt. The agencies do not intend to change how the waste treatment exclusion is implemented and have deleted this proposed comma. Continuing current practice, any waste treatment system built in a "water of the United States" would need a section 404 permit to be constructed and a section 402 permit for discharges from the waste treatment system into "waters of United States."

A number of commenters suggested the agencies clarify how the waste treatment system exclusion is currently implemented. Many comments raised questions about stormwater systems and wastewater reuse and whether such facilities qualified under the waste treatment system exclusion as part of a complete waste treatment system. For clarity, the agencies have identified related exclusions in paragraphs (b)(6) and (b)(7). Many commenters also suggested making substantive changes to the existing exclusion for waste treatment systems. Because the agencies are not making any substantive changes to the waste treatment system exclusion and these comments are outside the scope of the proposed rule, the final rule does not reflect changes suggested in public comments.

The existing exclusion for prior converted cropland moves to paragraph (b)(2) of the rule and is unchanged. A number of commenters suggested changes to the existing exclusion for prior converted cropland. As with waste treatment systems, the preamble to the proposed rule stated this rulemaking was not making changes to the exclusion for prior converted cropland. As a result, comments requesting changes to the prior converted cropland exclusion or seeking clarification of how the exclusion is implemented in the field are outside the scope of this rulemaking, and the rule does not reflect changes or respond to issues raised in public comments. The agencies will continue to implement this exclusion consistent with current policy and practice.

The agencies identify excluded ditches in paragraph (b)(3). Jurisdictional ditches are discussed at more detail in section IV.F. The rule excludes all ditches with ephemeral flow that are not excavated in or relocate a tributary. The rule also excludes ditches with intermittent flow

that are not a relocated tributary, excavated in a tributary, or drain wetlands, regardless of whether or not the wetland is a jurisdictional water. Finally, ditches that do not connect to a traditional navigable water, interstate water, or territorial sea either directly or through another water are excluded, regardless of whether the flow is ephemeral, intermittent, or perennial. These ditch exclusions are clearer for the regulated public to identify and more straightforward for agency staff to implement than the proposed rule or current policies. The ditch exclusions do not affect the possible status of a ditch as a point source.

Many comments addressed ditches, and many of these comments are reflected in the approach to ditches articulated in the rule. The majority of commenters requested that the agencies' ditch exclusion be clarified or broadened. Many commenters were confused by the term "uplands" and did not feel the term had a common understanding. For example, some commenters felt the term referred only to areas at higher elevations in the landscape. Many expressed concerns that all ditches would be jurisdictional under the proposed rule. Many groups especially called for exclusions of roadside ditches.

The revised exclusions reflect the agencies' careful consideration of these comments. First, the agencies have eliminated the term "uplands" in response to the questions the term created. Second, the agencies have instead provided a clearer statement of the types of ditches that are subject to exclusion—ditches that are not excavated in or relocate a tributary and ditches that do not drain a wetland. Eliminating the term "uplands" with this more straightforward description should improve clarity. Finally, the agencies have more clearly stated the flow regimes in ditches that are subject to the exclusions; these flow regimes are described earlier and have been used by the agencies consistently and are readily understood by field staff and the public.

As noted, the agencies received many comments asking that roadside ditches be addressed, and more specifically excluded, in the final rule. Like the proposed rule, the final rule does not include an explicit exclusion for roadside ditches, but the agencies believe the exclusions included in the final rule will address the vast majority of roadside and other transportation ditches. Moreover, since the agencies have focused in the final rule on the physical characteristics of excluded ditches, the exclusions will address all ditches that the agencies have

concluded should not be subject to jurisdiction, including certain ditches on agricultural lands and ditches associated with modes of transportation, such as roadways, airports, and rail lines.

As discussed in Section IV.F.1., the definition of tributary includes natural, undisturbed waters and those that have been man-altered or constructed, but which science shows function as a tributary. In addition, natural streams and rivers that are altered or modified for purposes as flood control, erosion control, and other reasons does not convert the tributary to a ditch. A stream or river that has been channelized or straightened because its natural sinuosity has been altered, cutting off the meanders, is not a ditch. A stream that has banks stabilized through use of concrete or rip-rap (*e.g.*, rocks or stones) is not a ditch. The Los Angeles River, for example, is a “water of the United States” (and, indeed, a traditional navigable water) and remains a “water of the United States” and is not a ditch excluded under paragraph (b)(3), even where it has been ditched, channelized, or concreted.

The rule excludes ditches with ephemeral flow except where a ditch is excavated in or relocates a covered tributary. Under the rule, that portion of a ditch with ephemeral flow actually excavated in or relocating the covered tributary would be considered jurisdictional. The jurisdictional status of upstream and downstream portions of the same ditch would have to be assessed based on the specific facts and under the terms of the rule to determine flow characteristics and whether or not the ditch is excavated in or relocates a tributary. This approach reasonably balances the exclusion with the need to ensure that covered tributaries, and the significant functions they provide, are preserved. A ditch that relocates a stream is not an excluded ditch under paragraph (b)(3), and a stream is relocated either when at least a portion of its original channel has been physically moved, or when the majority of its flow has been redirected. A ditch that is a relocated stream is distinguishable from a ditch that withdraws water from a stream without changing the stream’s aquatic character. The latter type of ditch is excluded from jurisdiction where it meets the listed characteristics of excluded ditches under paragraph (b)(3). The agencies will determine historical presence of tributaries using a variety of resources, such as USGS and state and local maps, historic aerial photographs, local surface water management plans, street maintenance data, wetlands and

conservation programs and plans, as well as functional assessments and monitoring efforts.

The rule also excludes ditches with intermittent flow except where a ditch is excavated in or relocates a covered tributary, or drains wetlands. Where an excluded ditch drains a wetland, the segment of the ditch that physically intersects the wetland would be considered jurisdictional. The jurisdictional status of upstream and downstream portions of the same ditch would have to be assessed based on the specific facts and under the terms of the rule to determine flow characteristics and whether or not the ditch drains a wetland. The provision of paragraph (b)(3) addressing draining of wetlands is specific to ditches with intermittent flow. As discussed previously, features that are ephemeral will flow only in response to precipitation events, such as rainfall or snowmelt. Ditches with ephemeral flow, therefore, do not typically have the flow characteristics characteristic of ditches that drain wetlands. The agencies have accordingly focused on intermittent ditches that drain wetlands.

In addition, the agencies clarify that a ditch drains a wetland when it physically intersects the wetland. If the ditch has been cut to carry only ephemeral flows, such as those following a storm event, the effect of the ditch is minimal as it carries only that flow that overtops the wetland during and immediately following the rain event. However, if the ditch has been cut to carry intermittent or perennial flows from the wetland, the ditch is serving as a conduit for transferring flow from the wetland to a downstream tributary. As a result of the cut ditch, the wetland’s hydrologic regime is modified and can generally affect the natural functions performed by the wetland. When the ditch has been cut to carry intermittent or perennial flow from the wetland to the downstream tributary, the wetland soils and vegetation can shift into a community that supports less hydric soils and a mix of riparian or upland vegetation. Consequently, the ditch is draining the wetland and the wetland quality degrades and may cease to exist over time. Therefore, a ditch that carries intermittent flow and physically intersects with a wetland is not excluded under this provision.

A number of commenters expressed concern that a ditch could be viewed as both a point source and a “water of the United States.” However, the approach that ditches can be considered both reflects the CWA itself as well as longstanding agency policy.

Paragraph (b)(4) of the rule identifies features and waters that the agencies have identified as generally not “waters of the United States” in previous preambles or guidance documents. Codifying these longstanding practices supports the agencies’ goals of providing greater clarity, certainty, and predictability for the regulated public and the regulators. The agencies’ 1986 and 1988 preambles indicated that these waters could be determined on a case-specific basis to be “waters of the United States.” This rule does not allow for this case-specific analysis to be used to establish jurisdiction—these waters are categorically excluded from jurisdiction. Some of the exclusions have been modified slightly to address public comments and improve clarity. The following features are not “waters of the United States”:

- Artificially irrigated areas that would revert to dry land should application of irrigation water to that area cease
- Artificial, constructed lakes or ponds created by excavating and/or diking dry land such as farm and stock watering ponds, irrigation ponds, settling basins, log cleaning ponds, cooling ponds, or fields flooded for rice growing
- Artificial reflecting pools or swimming pools created by excavating and/or diking dry land
- Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons
- Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand or gravel that fill with water
- Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways
- Puddles

Several of these exclusions use the phrase “dry land.” This phrase appears in the 1986 and 1988 preambles, and the agencies believe the term is well understood based on the more than 30 years of practice and implementation. But in keeping with the goal of providing greater clarity, the agencies state that “dry land” refers to areas of the geographic landscape that are not water features such as streams, rivers, wetlands, lakes, ponds and the like. However, it is important to note that a “water of the United States” is not considered “dry land” just because it lacks water at a given time. Similarly, an area remains “dry land” even if it is wet after a rainfall event. The agencies received comments suggesting that the

final rule provide a definition of “dry land” as it relates to the exclusion for stormwater control features. The agencies considered the request and determined that there was no agreed upon definition given geographic and regional variability. The agencies concluded that further clarity on this issue can be provided during implementation.

In the exclusion for artificial lakes or ponds, the agencies have removed language regarding “use” of the ponds, including the term “exclusively.” In most cases, the “use” of the pond is captured in its name. More importantly, the agencies recognize that artificial lakes and ponds are often used for more than one purpose and can have other beneficial purposes, such as animal habitat, water retention or recreation. For example, rice growing is typically facilitated by land leveling and inundation that floods vast areas. The fields are flooded for the purpose of weed control and to facilitate rice cultivation, but these rice fields are often extensively used by waterfowl and other wildlife. The agencies agree with commenters who raised concern that rice fields “used” both for rice growing and waterfowl habitat should continue to be excluded even where they are not used “exclusively” for a single purpose. The change to the exclusion reflects the agencies’ practice and ensures that waters the agencies have historically not treated as jurisdictional do not become so because of another incidental beneficial use.

The agencies have also added farm ponds, log cleaning ponds, and cooling ponds to the list of excluded ponds in the rule based on public comments. The list of ponds has always been illustrative rather than exhaustive, and the additions respond to requests to clarify that farm ponds, and log cleaning ponds¹² created in dry land are excluded. The agencies have also added cooling ponds created in dry land to the list of excluded waters. The agencies also note that cooling ponds that are created under section 404 in jurisdictional waters and that have NPDES permits are subject to the waste treatment system exclusion, which is not changing. Cooling ponds created to serve as part of a cooling water system with a valid state permit constructed in waters of the United States prior to enactment of the Clean Water Act and currently excluded from jurisdiction remain excluded under the new rule. Additional ponds will also likely fall under the exclusion based on site

specific evaluation, including, for example, fire control ponds and fishing ponds excavated from dry land. Artificial lakes and ponds created in dry land that do not connect to jurisdictional waters are covered by this exclusion. Where these ponds do connect and discharge to jurisdictional waters, the agencies will evaluate factors such as the potential for introduction of pollutants and coverage under an issued NPDES permit. As a general matter, ponds created in dry land that discharge to “waters of the United States” are covered by the exclusion where such discharge is regulated under a NPDES permit. Conveyances created in dry land that are physically connected to and are a part of the excluded feature are also excluded. These artificial features are working together as a system, and it is appropriate to treat them as one functional unit. The agencies emphasize that ponds excluded from “waters of the United States” can, in some circumstances, be point sources of pollution subject to section 301 of the Act.

The rule includes several refinements to the exclusion for water-filled depressions created as a result of certain activities. In addition to construction activity, the agencies have also excluded water-filled depressions created in dry land incidental to mining activity. This change is consistent with the agencies’ 1986 and 1988 preambles, which generally excluded pits excavated for obtaining fill, sand or gravel, and there is no need to distinguish between features based on whether they are created by construction or mining activity.

The agencies also here clarify their longstanding view that only the specific land being directly irrigated that would revert to dry land should irrigation cease is exempt; it is not the case that all waters within watersheds where irrigation occurs are exempt.

The rule identifies all erosional features, including gullies and rills, as non-jurisdictional features. While the proposed rule specifically identified gullies and rills, the agencies intended that all erosional features would be excluded. The final rule makes this clear. Erosional features are not jurisdictional under the terms of paragraph (a) and the definitions in paragraph (c), especially the definition of tributary. These features are specifically excluded in the rule to avoid confusion, because preceding guidance identified them as non-jurisdictional and many commenters stated these exclusions were important to maintain in the rule.

Tributaries can be distinguished from erosional features by the presence of bed and banks and an ordinary high water mark. Concentrated surface runoff can occur within erosional features without creating the permanent physical characteristics associated with bed and banks and ordinary high water mark. See Technical Support Document. It should be noted that some ephemeral streams are colloquially called “gullies” or the like even when they exhibit a bed and banks and an ordinary high water mark; regardless of the name they are given locally, waters that meet the definition of tributary are not excluded erosional features.

The rule also excludes lawfully constructed grassed waterways. Grassed waterways are lawfully constructed for purposes of this rule either where they are on dry land and replace non-jurisdictional erosional features or, more commonly, where they have been lawfully converted from an intermittent or ephemeral stream under a CWA permit. Once converted to grassed waterways, these former streams segments no longer exhibit a bed and banks or ordinary high water mark and are excluded because they do not meet the definition of “tributary.” However, such conversion does not sever jurisdiction over the entire length of the tributary above and below the grassed waterway. Instead, the grassed waterway is considered a constructed break in the bed and banks and ordinary high water mark. This is reflected in the definition of tributary, which specifically addresses natural or man-made breaks in bed and banks and ordinary high water mark.

The final rule adds an exclusion for puddles. The proposed rule did not explicitly exclude puddles because the agencies have never considered puddles to meet the minimum standard for being a “water of the United States,” and it is an inexact term. A puddle is commonly considered a very small, shallow, and highly transitory pool of water that forms on pavement or uplands during or immediately after a rainstorm or similar precipitation event. However, numerous commenters asked that the agencies expressly exclude them in a rule. The final rule does so.

The agencies include an exclusion for groundwater, including groundwater drained through subsurface drainage systems. As discussed in the preamble to the proposed rule, the agencies have never interpreted “waters of the United States” to include groundwater. The exclusion does not apply to surface expressions of groundwater, as some commenters requested, such as where groundwater emerges on the surface and

¹² Log cleaning ponds are used to float logs for removal of twigs, branches, and large knots.

becomes baseflow in streams or spring fed ponds.

The final rule includes a new exclusion in paragraph (b)(6) for stormwater control features constructed to convey, treat, or store stormwater that are created in dry land. The agencies stated in the proposed rule that the exclusions were guided by decisions of the Supreme Court and were intended to further the agencies' goal of providing clarity and certainty. The agencies in the proposed rule sought to provide a "full description" of the waters that will not be "waters of the United States." 79 FR at 22218. In response to the agencies' proposal, several commenters indicated additional clarity was needed, particularly with respect to stormwater control features and wastewater recycling facilities. This exclusion responds to numerous commenters who raised concerns that the proposed rule would adversely affect municipalities' ability to operate and maintain their stormwater systems, and also to address confusion about the state of practice regarding jurisdiction of these features at the time the rule was proposed.

The agencies' longstanding practice is to view stormwater control measures that are not built in "waters of the United States" as non-jurisdictional. Conversely, the agencies view some waters, such as channelized or piped streams, as jurisdictional currently even where used as part of a stormwater management system. Nothing in the proposed rule was intended to change that practice. Nonetheless, the agencies recognize that the proposed rule brought to light confusion about which stormwater control features are jurisdictional waters and which are not, and agree that it is appropriate to address this confusion by creating a specific exclusion in the final rule for stormwater controls features that are created in dry land.

Many commenters, particularly municipalities and other public entities that operate storm sewer systems and stormwater management programs, expressed concern that various stormwater control measures—such as stormwater treatment systems, rain gardens, low impact development/green infrastructure, and flood control systems—could be considered "waters of the United States" under the proposed rule, either as part of a tributary system, an adjacent water, or as a result of a case-specific significant nexus analysis. This exclusion should clarify the appropriate limits of jurisdiction relating to these systems. A key element of the exclusion is whether the feature or control system was built in dry land and whether it conveys,

treats, or stores stormwater. Certain features, such as curbs and gutters, may be features of stormwater collection systems, but have never been considered "waters of the United States."

Stormwater control features have evolved considerably over the past several years, and their nomenclature is not consistent, so in order to avoid unintentionally limiting the exclusion, the agencies have not included a list of excluded features in the rule. The rule is intended to exclude the diverse range of control features that are currently in place and may be developed in the future.

Traditionally, stormwater controls were designed to direct runoff away from people and property as quickly as possible. Cities built systems to collect, convey, or store stormwater, using structures such as curbs, gutters, and sewers. Often, cities used existing stream networks as part of the stormwater drainage network. Retention and detention stormwater ponds were built to store excess stormwater until it could be more safely released.

Recently, treatment of stormwater has become more prevalent to remove harmful pollutants before the stormwater is discharged. Even more recently, cities have turned to green infrastructure, using existing natural features or creating new features that mimic natural hydrological processes that work to infiltrate or evapo-transpire precipitation, to manage stormwater at its source and keep it out of the conveyance system. These engineered components of stormwater management systems can address both water quantity and quality concerns, as well as provide other benefits to communities. This rule is designed to avoid disincentives to this environmentally beneficial trend in stormwater management practices. This exclusion does not cover transportation ditches; those ditches are addressed under paragraph (b)(3) of the rule. As discussed above, the exclusion in paragraph (b)(6) is intended to address engineered stormwater control structures in municipal or urban environments. Stormwater control features are designed to address runoff that occurs during and shortly after precipitation events; as a result, stormwater features that convey runoff are expected to only carry ephemeral or intermittent flow. For ease of implementation, the agencies want water features to be dealt with under only one provision of the rule. However, the agencies do not expect the scope of ditches excluded to be different under paragraphs (b)(3) and (b)(6), so there

should be little practical need to distinguish between the two.

Paragraph (b)(7) of the rule clarifies that wastewater recycling structures constructed in dry land are excluded. This new exclusion clarifies the agencies' current practice that such waters and water features used for water reuse and recycling are not jurisdictional when constructed in dry land. The agencies recognize the importance of water reuse and recycling, particularly in areas like California and the Southwest where water supplies can be limited and droughts can exacerbate supply issues. This exclusion responds to numerous commenters and encourages water reuse and conservation while still appropriately protecting the chemical, physical, and biological integrity of the nation's water under CWA.

The agencies specifically exclude constructed detention and retention basins created in dry land used for wastewater recycling as well as groundwater recharge basins and percolation ponds built for wastewater recycling. Many commenters noted the growing interest in and commitment to water recycling and reuse projects. Detention and retention basins can play an important role in capturing and storing water prior to beneficial reuse. Similarly, groundwater recharge basins and percolation ponds are becoming more prevalent tools for water reuse and recycling. These features are used to collect and store water, which then infiltrates into groundwater via permeable soils. Though these features are often created in dry land, they are also often located in close proximity to tributaries or other larger bodies of water. The exclusion also covers water distributary structures that are built in dry land for water recycling. These features often connect or carry flow to other water recycling structures, for example a channel or canal that carries water to a percolation pond. The agencies have not considered these water distributary systems jurisdictional where they do not have surface connections back into, and contribute flow to, "waters of the United States." In contrast, the agencies have consistently regulated aqueducts and canals as "waters of the United States" where they serve as tributaries, removing water from one part of the tributary network and moving it to another. The exclusion in paragraph (b)(7) codifies long-standing agency practice and encourages water management practices that the agencies agree are important and beneficial.

The agencies also received other suggestions for new exclusions that

were not adopted in the final rule. The agencies determined that it was not appropriate or necessary to add certain requested exclusions for one or more reasons, including: (1) The requested exclusion was so broadly characterized as to introduce significant confusion and potentially have the effect of excluding waters that the agencies have consistently determined should be covered as “waters of the U.S.,” (2) the requested exclusion was so site-specific or activity-based as to lack illustrative value, or (3) the requested exclusion was likely covered by another exclusion in the final rule.

It is important to note that while the waters listed in the exclusions are not “waters of the United States,” they can serve as a hydrologic connection that the agencies would consider under a case-specific significant nexus under paragraphs (a)(7) and (a)(8). For example, a wetland may be directly hydrologically connected to a covered tributary via flow through an excluded non-wetland swale. While the swale itself is excluded from jurisdiction, the connection of the wetland to the tributary is relevant for determining whether the wetland has a significant nexus to downstream traditional navigable waters, interstate waters, or the territorial seas. In addition, these geographic features may function as “point sources” under CWA section 502(14), such that discharges of pollutants to waters through these features would be subject to other CWA regulations (e.g., CWA section 402).

V. Economic Impacts

This rule establishing the definition of “waters of the United States,” by itself, imposes no direct costs. The potential costs and benefits incurred as a result of this rule are considered indirect, because the rule involves a definitional change to a term that is used in the implementation of CWA programs (i.e., sections 303, 305, 311, 401, 402, and 404). Entities currently are, and will continue to be, regulated under these programs that protect “waters of the United States” from pollution and destruction. Each of these programs may subsequently impose direct or indirect costs as a result of implementation of their specific regulations.

While the rule imposes no direct costs, the agencies prepared an economic analysis for informational purposes. In preparing the economic analysis to accompany the final rule, the agencies considered what should be the appropriate baseline for comparison. Existing regulations and historic practice in implementing them represent one appropriate baseline for

comparison, and because the final rule is narrower in jurisdictional scope than the existing regulations, there would be no additional costs in comparison to this baseline. A comparison to recent field practice following the 2008 guidance is also an appropriate baseline, and the agencies prepared illustrative estimates of how the costs and benefits of various CWA programs may change with an increase in positive jurisdictional determinations relative to that baseline.

To estimate changes in potential costs and benefits of different CWA programs, the economic analysis utilizes available program data to estimate the extent to which assertion of jurisdiction might change under the associated final policies. The proposed rule analysis utilized CWA Section 404 jurisdictional determination and permit data from fiscal years 2009–2010 (post SWANCC and *Rapanos*), following issuance of program guidance in 2008 by the EPA and the Corps. The analysis for the final rule has been updated using data from fiscal years 2013–2014, providing a comparison to a more recent year of data, which responds to public comments. An estimate of how assertion of jurisdiction may change compared to the recent practice baseline, developed using updated data from fiscal years 2013–2014 jurisdictional determinations, is then applied to cost and benefit information for affected CWA programs. Additional updates to the economic analysis include a refined approach to calculating benefits from section 404 compensatory mitigation, differentiating between emergent and forested wetlands, as well as presenting results in ranges to reflect uncertainty. The agencies’ economic analysis yielded the following key conclusions:

- Compared to the current regulations and historic practice of making jurisdictional determinations, the scope of jurisdictional waters will decrease, as would the costs and benefits of CWA programs.
- Compared to a baseline of recent practice, the agencies assessed two scenarios. Those scenarios result in an estimated increase of between 2.84 and 4.65 percent in positive jurisdictional determinations annually.
- The agencies’ analysis indicates that for both scenarios, the change in benefits of CWA programs exceed the costs by a ratio of greater than 1:1.
- The economic analysis estimates that incremental annual costs for scenario 1 will range from \$158M–\$307M and incremental annual benefits will range from \$339M–\$350M and, for scenario 2, costs will range from

\$237M–\$465M and benefits will range from \$555M–\$572M.

The agencies conducted this economic analysis to provide the public with information on the potential changes to the costs and benefits of various CWA programs that may result from a change in the number of positive jurisdictional determinations. The economic analysis was done for informational purposes only, and the final decisions on the scope of “waters of the United States” in this rulemaking are not based on consideration of the information in the economic analysis. The economic analysis fulfills the requirements of Executive Orders 13563 and 12866. An explanation of the data, methods, and assumptions used to estimate indirect costs and benefits can be found in the *Economic Analysis for the Clean Water Rule; Definition of “Waters of the United States” Under the Clean Water Act (Final Rule)* in the accompanying docket.

VI. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Accordingly, EPA and the Army submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA and the Army prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in *Economic Analysis of the EPA-Army Clean Water Rule*. A copy of the analysis is available in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CWA section 402 program may be found at 40 CFR 9.1. (OMB Control No. 2040–0004, EPA ICR No. 0229.19). For the CWA section 404 regulatory

program, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003). However, there are no new approval or application processes required as a result of this rulemaking that necessitate a new Information Collection Request (ICR).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, “small entity” is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration’s size standards (see 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, we certify that this final rule will not have a significant economic impact on a substantial number of small entities. See, e.g., *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001); *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000); *Am. Trucking Ass’n v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999); *Mid-Tex Elec. Co-op, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).

Under the RFA, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the initial regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603. The scope of jurisdiction in this rule is narrower than that under the existing regulations. See 40 CFR 122.2 (defining “waters of the United States”). Because fewer waters will be subject to the CWA under the rule than are subject to regulation under the existing regulations, this action will not affect small entities to a greater degree than the existing regulations. As a consequence, this action will not have

a significant adverse economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

This rule is not designed to “subject” any entities of any size to any specific regulatory burden. Rather, it is designed to clarify the statutory scope of “the waters of the United States, including the territorial seas,” section 502(7), consistent with Supreme Court precedent. This question of CWA jurisdiction is informed by the tools of statutory construction and the geographical and hydrological factors identified in *Rapanos v. United States*, 547 U.S. 715 (2006), which are not factors readily informed by the RFA.

Nevertheless, the scope of the term “waters of the United States” is a question that has continued to generate substantial interest, particularly within the small business community, because permits must be obtained for many discharges of pollutants into those waters. In light of this interest, the EPA and the Army determined to seek wide input from representatives of small entities while formulating the proposed and final definition of this term that reflects the intent of Congress consistent with the mandate of the Supreme Court’s decisions. Such outreach, although voluntary, is also consistent with the President’s January 18, 2011 Memorandum on Regulatory Flexibility, Small Business, and Job Creation, which emphasizes the important role small businesses play in the American economy. This process has enabled the agencies to hear directly from these representatives, throughout the rule development, about how they should approach this complex question of statutory interpretation, together with related issues that such representatives of small entities may identify for possible consideration in separate proceedings. The agencies have prepared a report summarizing their small entity outreach, the results of this outreach, and how these results have informed the development of this rule. This report, *Report of the Discretionary Small Entity Outreach for the Revised Definition of Waters of the United States* (Docket Id. No. EPA–HQ–OW–2011–0880–1927), is available in the docket.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538), and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector,

and does not contain regulatory requirements that might significantly or uniquely affect small governments. The definition of “waters of the United States” applies broadly to CWA programs.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Keeping with the spirit of Executive Order 13132 and consistent with the agencies’ policy to promote communications with state and local governments, the agencies consulted with state and local officials throughout the process and solicited their comments on the proposed action and on the development of the rule.

For this rule state and local governments were consulted at the onset of rule development in 2011, and following the publication of the proposed rule in 2014. In addition to engaging key organizations under federalism, the agencies sought feedback on this rule from a broad audience of stakeholders through extensive outreach to numerous state and local government organizations.

Early in the rulemaking process, EPA held two in-person meetings and two phone calls in the fall and winter of 2011. Organizations involved include the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the County Executives of America, the National Associations of Towns and Townships, the International City/County Management Association, and the Environmental Council of the States. Additionally, the National Association of Clean Water Agencies and the Association of Clean Water Administrators were invited to participate. The agencies held many additional calls and meetings with state and local governments and their associations, in preparation for the development of a proposed rule.

Similarly to the outreach conducted prior to the development of the rule, the agencies committed themselves to providing a transparent, comprehensive, and effective process for taking public comment on the proposed rule. As part of this consultation, EPA held a meeting on May 13, 2014 to seek technical input on the proposed rule from the largest

national representative organizations for State and local governments. During this process the agencies also extended its focused outreach to include a series of meetings with the Local Government Advisory Committee, and the Environmental Council of the States in conjunction with the Association of Clean Water Administrators and the Association of State Wetland Managers. In addition to engaging these key organizations, the agencies sought additional feedback on the proposed rule through broader public outreach to state and local government organizations during the public comment period.

During the consultation process, some participants expressed concern that the proposed changes may impose a resource burden on state and local governments. Some participants urged EPA to ensure that states are not unduly burdened by the regulatory revisions.

The agencies have prepared a report summarizing their voluntary consultation and extensive outreach to State, local, and county governments, the results of this outreach, and how these results have informed the development of today's rule. This report, *Report on the Discretionary Consultation and Outreach to State, Local, and County Governments on the Clean Water Rule: Definition of "Waters of the United States," Final Rule* (Docket Id. No. EPA-HQ-OW-2011-0880) is available in the docket for this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order (E.O.) 13175 (65 FR 67249, November 9, 2000), agencies generally may not issue a regulation that has tribal implications, (1) that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the agencies consult with tribal officials early in the process of developing the proposed regulation and develop a tribal summary impact statement, or (2) that preempts tribal law unless the agencies consult with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

This action does not have tribal implications as specified in E.O. 13175. In compliance with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the agencies consulted with tribal officials throughout the rulemaking process to

gain an understanding of tribal views and solicited their comments on the proposed action and on the development of this rule. In the course of this consultation, EPA and the Corps jointly participated in aspects of the process.

The agencies began consultation with federally-recognized Indian tribes on the Clean Water Rule defining "waters of the United States" in October 2011. The consultation and coordination process, including providing information on the development of an accompanying science report on the connectivity of streams and wetlands, continued, in stages, over a four year period, until the close of the public comment period on November 14, 2014. EPA invited tribes to provide written input on the rulemaking throughout both the tribal consultation process and public comment period.

EPA specifically consulted with tribal officials to gain an understanding of, and to address, the tribal views on the proposed rule. In 2011, close to 200 tribal representatives and more than 40 tribes participated in the consultation process, which included multiple webinars and national teleconferences and face-to-face meetings. In addition, EPA received written comments from three tribes during the initial consultation period.

EPA continued to provide status updates to the National Tribal Water Council and the National Tribal Caucus during 2012 through 2014. The final consultation event was completed on October 23, 2014 as a national teleconference with the Office of Water's Deputy Assistant Administrator. Ultimately, EPA received an additional 23 letters from tribes/tribal organizations by the completion of the consultation period. The comments indicated that Tribes, overall, support increased clarity of waters protected by the Clean Water Act, but some expressed concern with the consultation process and the burden of any expanded jurisdiction. The agencies considered the feedback received through consultation and written comments in developing today's rule.

The agencies have prepared a report summarizing their consultation with tribal nations, and how these results have informed the development of this rule. This report, *Final Summary of Tribal Consultation for the Clean Water Rule: Definition of "Waters of the United States" Under the Clean Water Act; Final Rule* (Docket Id. No. EPA-HQ-OW-2011-0880), is available in the docket for this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs federal agencies to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, the agencies are not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (E.O.) 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The agencies have determined that the rule will not have disproportionately high and adverse

human health or environmental effects on minority or low-income populations, because it does not adversely affect the level of protection provided to human health or the environment.

The rule defines the scope of waters protected under the CWA. The increased clarity regarding the definition of “waters of the United States” is intended to benefit all regulators, stakeholders, and interested parties. In addition, this rule is national in scope and, therefore, is not specific to a particular geographic area.

In the spirit of E.O. 12898, input from environmental justice stakeholders was requested during the rule development process, through a series of stakeholder meetings between April and November 2014. On May 12, 2014, EPA held a focused teleconference with non-traditional stakeholders, including environmental justice and faith-based stakeholders, to solicit their individual input on the proposed rule. The agencies have used the feedback from public outreach as the source of early guidance and recommendations for refining the proposed rule. Stakeholder input received during public outreach events in combination with the written comments received during the public comment period have reshaped each of the definitions included in today’s rule, and incorporate increased clarity for regulators, stakeholders, and the regulated public to assist them in identifying waters as “waters of the United States.”

The agencies prepared a report summarizing their outreach to the environmental justice community, analysis of potential impacts, and how these results informed the development of the rule. This report, *Environmental Justice Report for the Clean Water Rule: Definition of “Waters of the United States” Under the Clean Water Act; Final Rule* (Docket Id. No. EPA–HQ–OW–2011–0880), is available in the docket for this rule.

K. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and the agencies will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a “major rule” as defined by 5 U.S.C. 804(2) based on potential indirect costs.

L. Environmental Documentation

In this joint rulemaking, the agencies establish a definitional rule that clarifies the scope of the Clean Water Act. The definition will apply to all provisions of the Act, and this regulation specifically amends EPA regulations implementing

sections 301, 304, 306, 311, 402 and 404, while the Army is making substantively identical revisions to its regulations under section 404 of the CWA. Section 511(c) of the Clean Water Act provides that, except for certain actions not relevant here, no action by EPA constitutes “a major federal action significantly affecting the quality of the human environment within the meaning of [NEPA]”.

The Army has prepared a final environmental assessment and Findings of No Significant Impact consistent with the National Environmental Policy Act (NEPA). The Army has determined that the rule is not a major federal action significantly affecting the quality of the human environment that would require the preparation of an environmental impact statement. The assessment is contained in the record for this rulemaking. Furthermore, appropriate environmental documentation, including an EIS when required, is prepared by the Corps for general permits and specifically for each and every standard individual permit application before making final permit decisions.

M. Judicial Review

Section 509(b)(1) of the CWA provides for judicial review in the courts of appeals of specifically enumerated actions of the Administrator. The Supreme Court and lower courts have reached different conclusions on the types of actions that fall within section 509. *Compare, E.I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *NRDC v. EPA*, 673 F.2d 400 (D.C. Cir. 1982); *National Cotton Council of Amer. v. EPA*, 553 F.3d 927 (6th Cir. 2009) *cert denied* 559 U.S. 936 (2010) *with, Northwest Environmental Advocates v. EPA*, 537 F.3d 1006 (9th Cir. 2008); *Friends of the Everglades v. EPA*, 699 F.3d 1280 (11th Cir. 2012) *cert denied* 559 U.S. 936 (2010).

See DATES section for information regarding the timing for seeking judicial review of this rule.

List of Subjects

33 CFR Part 328

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Navigation, Water pollution control, Waterways.

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 301, and 401

Environmental protection, Water pollution control.

Dated: May 27, 2015.

Gina McCarthy,

Administrator, Environmental Protection Agency.

Dated: May 27, 2015.

Jo-Ellen Darcy,

Assistant Secretary of the Army, (Civil Works), Department of the Army.

Title 33—Navigation and Navigable Waters

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is amended as follows:

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

* 1. The authority citation for part 328 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 2. Section 328.3 is amended by revising paragraphs (a) through (c), removing paragraphs (d) and (e), and redesignating paragraph (f) as paragraph (d) to read as follows:

§328.3 Definitions.

* * * * *

(a) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (b) of this section, the term “waters of the United States” means:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) The territorial seas;

(4) All impoundments of waters otherwise identified as waters of the United States under this section;

(5) All tributaries, as defined in paragraph (c)(3) of this section, of waters identified in paragraphs (a)(1) through (3) of this section;

(6) All waters adjacent to a water identified in paragraphs (a)(1) through (5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(7) All waters in paragraphs (a)(7)(i) through (v) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section. The waters identified in each of paragraphs (a)(7)(i) through (v) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (a)(1)

through (3) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (a)(6) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (a)(6), they are an adjacent water and no case-specific significant nexus analysis is required.

(i) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(ii) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(iii) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(iv) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(v) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(8) All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1) through (3) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (a)(1) through (3) of this section or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (a)(6) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (a)(6), they are an adjacent water and no case-specific significant nexus analysis is required.

(b) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(4) through (8) of this section.

(1) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act.

(2) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(3) The following ditches:

(i) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(ii) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(iii) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1) through (3) of this section.

(4) The following features:

(i) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(ii) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(iii) Artificial reflecting pools or swimming pools created in dry land;

(iv) Small ornamental waters created in dry land;

(v) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(vi) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(vii) Puddles.

(5) Groundwater, including groundwater drained through subsurface drainage systems.

(6) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(7) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(c) *Definitions.* In this section, the following definitions apply:

(1) *Adjacent.* The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (a)(1) through (5) of this

section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (a)(1) through (5) of this section. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (a)(1) through (5) or are located at the head of a water identified in paragraphs (a)(1) through (5) of this section and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(2) *Neighboring.* The term *neighboring* means:

(i) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(ii) All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1) through (5) of this section and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(iii) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of this section, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(3) *Tributary and tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (a)(4) of this section), to a water identified in paragraphs (a)(1) through (3) of this section that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (b) of this

section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (a)(1) through (3) of this section.

(4) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(5) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream paragraph (a)(1) through (3) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (c)(5)(i) through (ix) of this section. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (a)(1) through (3) of this section. Functions relevant to the significant nexus evaluation are the following:

- (i) Sediment trapping,
- (ii) Nutrient recycling,

- (iii) Pollutant trapping, transformation, filtering, and transport,
- (iv) Retention and attenuation of flood waters,

- (v) Runoff storage,
- (vi) Contribution of flow,
- (vii) Export of organic matter,
- (viii) Export of food resources, and
- (ix) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (a)(1) through (3) of this section.

(6) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(7) *High tide line*. The term *high tide line* means the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

Title 40—Protection of Environment

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 110—DISCHARGE OF OIL

* 3. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*, 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR parts 1971–1975 Comp., p. 793.

* 4. Section 110.1 is amended by removing the definition of “wetlands” and revising the definition of “navigable waters” to read as follows:

§110.1 Definitions.

* * * * *

Navigable waters means waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this section, the term “waters of the United States” means:

- (i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

- (ii) All interstate waters, including interstate wetlands;

- (iii) The territorial seas;

- (iv) All impoundments of waters otherwise identified as waters of the United States under this section;

- (v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

- (vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

- (vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this section.

(i) Waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent.* The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(1) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring.* The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary and tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this section), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank,

shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 112—OIL POLLUTION PREVENTION

* 5. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 6. Section 112.2 is amended by removing the definition of “wetlands” and revising the definition of “Navigable waters” to read as follows:

§112.2 Definitions.

* * * * *

Navigable waters means waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

- (i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (ii) All interstate waters, including interstate wetlands;
- (iii) The territorial seas;
- (iv) All impoundments of waters otherwise identified as waters of the United States under this section;
- (v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the

100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(ii) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(iii) Groundwater, including groundwater drained through subsurface drainage systems.

(iv) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(v) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow

sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the

chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this section. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent

aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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PART 116—DESIGNATION OF HAZARDOUS SUBSTANCE

* 7. The authority citation for part 116 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 8. Section 116.3 is amended by revising the definition of “Navigable waters” to read as follows:

§116.3 Definitions.

* * * * *

Navigable waters is defined in section 502(7) of the Act to mean “waters of the United States, including the territorial seas.”

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(ii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iii) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(iv) Groundwater, including groundwater drained through subsurface drainage systems.

(v) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vi) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire

water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this section.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider

the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

* 9. The authority citation for part 117 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.* and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

* 10. Section 117.1 is amended by revising paragraph (i) to read as follows:

§117.1 Definitions.

* * * * *

(i) *Navigable waters* is defined in section 502(7) of the Act to mean “waters of the United States, including the territorial seas.”

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (i)(2) of this section, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (i)(3)(iii) of this section, of waters identified in paragraphs (i)(1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (i)(1)(i) through

(v) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (i)(1)(vii)(A) through (E) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (i)(1)(i) through (iii) of this section. The waters identified in each of paragraphs (i)(1)(vii)(A) through (E) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (i)(1)(i) through (iii) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (i)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (i)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in (i)(1)(i) through (iii) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (i)(1)(i) through (v) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (i)(1)(i) through (iii) of this section. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (i)(1)(i) through (iii) of this

section or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (i)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (i)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (i)(1)(iv) through (viii) of this section.

(i) Waste treatment systems, (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (i)(1)(i) through (iii) of this section.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; ground water recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this paragraph, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (i)(1)(i) through (v) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (i)(1)(i) through (v) of this section. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (i)(1)(i) through (v) or are located at the head of a water identified in paragraphs (i)(1)(i) through (v) of this section and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (i)(1)(i) through (v) of this section. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (i)(1)(i) through (v) of this section and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (i)(1)(i) or (iii) of this section, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary and tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (i)(1)(iv) of this section), to

a water identified in paragraphs (i)(1)(i) through (iii) of this section that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (i)(2) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (i)(1)(i) through (iii) of this section.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (i)(1)(i) through (iii) of this section. The term "in the region" means the watershed that drains to the nearest water identified in paragraphs (i)(1)(i) through (iii) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (i)(1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in

paragraphs (i)(3)(v)(A) through (I) of this section. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (i)(1)(i) through (iii) of this section. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (i)(1)(i) through (iii) of this section.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

**PART 122—EPA ADMINISTERED
PERMIT PROGRAMS: THE NATIONAL
POLLUTANT DISCHARGE
ELIMINATION SYSTEM**

* 11. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

* 12. Section 122.2 is amended by:

* a. Lifting the suspension of the last sentence of the definition of “Waters of the United States” published July 21, 1980 (45 FR 48620);

* b. Removing the definition of “wetlands” and revising the definition of “Waters of the United States” and

* c. Suspending the last sentence of the definition of “Waters of the United States” published July 21, 1980 (45 FR 48620).

The revision reads as follows:

§122.2 Definitions.

* * * * *

Waters of the United States or waters of the U.S. means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this section, of waters identified in paragraphs (1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters

identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (v) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to

meet the requirements of the Clean Water Act. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

(ii) Prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water tributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary and tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus

to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term "in the region" means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified

in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

* 13. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 14. Section 230.3 is amended by:
* a. Removing paragraph (b) and reserved paragraphs (f), (g), (j) and (l).

- * b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d).
- * c. Redesignating paragraphs (h) and (i) as paragraphs (e) and (f).
- * d. Redesignating paragraph (k) as paragraph (g).
- * e. Redesignating paragraphs (m) through (q) as paragraphs (h) through (l).
- * f. Redesignating paragraph (q-1) as paragraph (m).
- * g. Redesignating paragraph (r) as paragraph (n).
- * h. Redesignating paragraph (s) as paragraph (o).
- * i. Revising newly redesignated paragraph (o).
- * j. Removing paragraph (t).

The revision reads as follows:

§230.3 Definitions.

* * * * *

(o) The term *waters of the United States* means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (o)(2) of this section, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (o)(3)(iii) of this section, of waters identified in paragraphs (o)(1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (o)(1)(i) through (v) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (o)(1)(vii)(A) through (E) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (o)(1)(i) through (iii) of this section. The waters identified in each of paragraphs (o)(1)(vii)(A) through (E) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (o)(1)(i) through (iii) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (o)(1)(vi) of this section when performing a significant nexus analysis.

If waters identified in this paragraph are also an adjacent water under paragraph (o)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (o)(1)(i) through (iii) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (o)(1)(i) through (v) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (o)(1)(i) through (iii) of this section. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (o)(1)(i) through (iii) of this section or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (o)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (o)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (o)(1)(iv) through (viii) of this section.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.

(ii) Prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (o)(1)(i) through (iii) of this section.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this paragraph (o), the following definitions apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (o)(1)(i) through (v) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of

adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (o)(1)(i) through (v) of this section. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (o)(1)(i) through (v) or are located at the head of a water identified in paragraphs (o)(1)(i) through (v) of this section and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (o)(1)(i) through (v) of this section. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (o)(1)(i) through (v) of this section and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (o)(1)(i) or (iii) of this section, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary and tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (o)(1)(iv) of this section), to a water identified in paragraphs (o)(1)(i) through (iii) of this section that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (o)(2) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for

any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (o)(1)(i) through (iii) of this section.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (o)(1)(i) through (iii) of this section. The term "in the region" means the watershed that drains to the nearest water identified in paragraphs (o)(1)(i) through (iii) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water's effect on downstream (o)(1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (o)(3)(v)(A) through (I) of this section. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (o)(1)(i) through (iii) of this section. Functions relevant to the significant nexus evaluation are the following:

(A) Sediment trapping,
(B) Nutrient recycling,
(C) Pollutant trapping, transformation, filtering, and transport,

(D) Retention and attenuation of flood waters,

(E) Runoff storage,

(F) Contribution of flow,

(G) Export of organic matter,

(H) Export of food resources, and

(I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (o)(1) through (3) of this section.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

* 15. The authority citation for part 230 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 16. Section 232.2 is amended by removing the definition of "wetlands" and revising the definition of "Waters of the United States" to read as follows:

§232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this

definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) Prairie potholes. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) Carolina bays and Delmarva bays. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) Pocosins. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) Western vernal pools. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) Texas coastal prairie wetlands. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges,

intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi) of this definition, they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for

rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary and tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands.* The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands

generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus.* The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line.* The term *high tide line* means the line of intersection of the

land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

* 17. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 18. Section 300.5 is amended by revising the definition of “navigable waters” to read as follows:

§300.5 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition

where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of

this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater

recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent.* The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring.* The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is

characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant

nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this definition.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

* 19. In appendix E to part 300, section 1.5 Definitions is amended by revising the definition of “navigable waters” to read as follows:

Appendix E to Part 300—Oil Spill Response

* * * * *

1.5 Definitions. * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this definition, of waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands

found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into

a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent.* The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring.* The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (1)(iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries.* The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified

in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this section.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by

physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

* 20. The authority citation for part 302 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 21. Section 302.3 is amended by revising the definition of “Navigable waters” to read as follows:

§302.3 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

- (i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (ii) All interstate waters, including interstate wetlands;
- (iii) The territorial seas;
- (iv) All impoundments of waters otherwise identified as waters of the United States under this section;
- (v) All tributaries, as defined in paragraph (3)(iii) of this definition, of

waters identified in paragraphs (1)(i) through (iii) of this definition;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins*. Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermountain flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. For waters determined to have a significant nexus,

the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this definition.

(i) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(ii) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(iii) Groundwater, including groundwater drained through subsurface drainage systems.

(iv) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(v) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary

structures built for wastewater recycling.

(3) In this definition, the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (1)(i) through (v) of this definition, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (1)(i) through (v) of this definition. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (1)(i) through (v) or are located at the head of a water identified in paragraphs (1)(i) through (v) of this definition and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition. The entire water is neighboring if a portion is located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (v) of this definition and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (1)(i) or (iii) of this definition, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These

physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (1)(i) through (iii) of this definition. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (3)(v)(A) through (I) of this definition. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with

similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (1)(i) through (iii) of this section.

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

PART 401—GENERAL PROVISIONS

* 22. The authority citation for part 401 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

* 23. Section 401.11 is amended by revising paragraph (I) to read as follows:

§401.11 General definitions.

* * * * *

(I) The term *navigable waters* means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (I)(2) of this section, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (I)(3)(iii) of this section, of waters identified in paragraphs (I)(1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (I)(1)(i) through (v) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (I)(1)(vii)(A) through (E) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this section. The waters identified in each of paragraphs (I)(1)(vii)(A) through (E) of this section are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (I)(1)(i) through (iii) of this section. Waters identified in this paragraph shall not be combined with waters identified in paragraph (I)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (I)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in (I)(1)(i) through (iii) of this section and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (I)(1)(i) through (v) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (I)(1)(i) through (iii) of this section. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in paragraphs (I)(1)(i) through (iii) of this section or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (I)(1)(vi) of this section when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (I)(1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (I)(1)(iv) through (viii) of this section.

(i) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(ii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (I)(1)(i) through (iii) of this section.

(iii) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(iv) Groundwater, including groundwater drained through subsurface drainage systems.

(v) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vi) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this paragraph (I), the following terms apply:

(i) *Adjacent*. The term *adjacent* means bordering, contiguous, or neighboring a water identified in paragraphs (I)(1)(i) through (v) of this section, including waters separated by constructed dikes or barriers, natural river berms, beach dunes, and the like. For purposes of adjacency, an open water such as a pond or lake includes any wetlands within or abutting its ordinary high water mark. Adjacency is not limited to waters located laterally to a water identified in paragraphs (I)(1)(i) through (v) of this section. Adjacent waters also include all waters that connect segments of a water identified in paragraphs (I)(1)(i) through (v) or are located at the head of a water identified in paragraphs (I)(1)(i) through (v) of this section and are bordering, contiguous, or neighboring such water. Waters being used for established normal farming, ranching, and silviculture activities (33 U.S.C. 1344(f)) are not adjacent.

(ii) *Neighboring*. The term *neighboring* means:

(A) All waters located within 100 feet of the ordinary high water mark of a water identified in paragraphs (I)(1)(i) through (v) of this section. The entire water is neighboring if a portion is

located within 100 feet of the ordinary high water mark;

(B) All waters located within the 100-year floodplain of a water identified in paragraphs (I)(1)(i) through (v) of this section and not more than 1,500 feet from the ordinary high water mark of such water. The entire water is neighboring if a portion is located within 1,500 feet of the ordinary high water mark and within the 100-year floodplain;

(C) All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (I)(1)(i) or (iii) of this section, and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. The entire water is neighboring if a portion is located within 1,500 feet of the high tide line or within 1,500 feet of the ordinary high water mark of the Great Lakes.

(iii) *Tributary* and *tributaries*. The terms *tributary* and *tributaries* each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (I)(1)(iv) of this section), to a water identified in paragraphs (I)(1)(i) through (iii) of this section that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (I)(2) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a water identified in paragraphs (I)(1)(i) through (iii) of this section.

(iv) *Wetlands*. The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence

of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(v) *Significant nexus*. The term *significant nexus* means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (I)(1)(i) through (iii) of this section. The term “in the region” means the watershed that drains to the nearest water identified in paragraphs (I)(1)(i) through (iii) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Waters are similarly situated when they function alike and are sufficiently close to function together in affecting downstream waters. For purposes of determining whether or not a water has a significant nexus, the water’s effect on downstream (1)(i) through (iii) waters shall be assessed by evaluating the aquatic functions identified in paragraphs (I)(3)(v)(A) through (I) of this section. A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (I)(1)(i) through (iii) of this section. Functions relevant to the significant nexus evaluation are the following:

- (A) Sediment trapping,
- (B) Nutrient recycling,
- (C) Pollutant trapping, transformation, filtering, and transport,
- (D) Retention and attenuation of flood waters,
- (E) Runoff storage,
- (F) Contribution of flow,
- (G) Export of organic matter,
- (H) Export of food resources, and
- (I) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a water identified in paragraphs (I)(1)(i) through (iii) of this section.

(vi) *Ordinary high water mark*. The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *High tide line*. The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the

foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure

from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

* * * * *

[FR Doc. 2015-13435 Filed 6-26-15; 8:45 am]

BILLING CODE 6560-50-P

To: Jensen, Stacey M CIV USARMY HQDA (US[Stacey.M.Jensen@usace.army.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US[Jennifer.A.Moyer@usace.army.mil]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US[John.M.Wilson@usace.army.mil]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]; Bahk, Benjamin[Bahk.Benjamin@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Barger, Cindy S CIV USARMY HQDA ASA CW (US[cindy.s.barger.civ@mail.mil]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 10:38:59 PM
Subject: Reminder and Link to materials for Tuesday 1pm WOTUS-2 interagency staff meeting

Hi everybody –

This email is a reminder of tomorrow's interagency staff meeting on WOTUS-2, scheduled for 1pm. For those able to attend in person, we're in 7301 ("Potomac Conference Room") in EPA West. For telecom participation, call **Nonresponsive Conference Code/ Ex. 6**. The plan for tomorrow's interagency staff meeting is to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Ideally, we could get

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder with read-only copies of the documents to be discussed at this meeting:

Nonresponsive Internal URL/ Ex. 6

Documents include the agenda for the Wednesday 10am leadership meeting, and the current draft **Deliberative Process / Ex. 5**

If you have edits or comments you would like to make to the preamble, please do them NOT in the meeting documents folder but instead in the folder with the working version of the preamble. Please do edits and comments using redline/strikeout so others can readily see your suggested changes. This helps with version control. Here's a link:

Nonresponsive Internal URL/ Ex. 6

Looking forward to talking with you tomorrow!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

From: Downing, Donna

Location: EPA 1201 Constitution Ave NW, Washington DC 20004 WJCE 3233 Please call

Nonresponsive Conference Code/ Ex. 6 for escort

Importance: Normal

Subject: Accepted: FW: Discussion of Economic Analysis Approach and OMB Engagement on WOTUS

Call in **Nonresponsive Conference Code/ Ex. 6**

Start Date/Time: Tue 4/18/2017 1:00:00 PM

End Date/Time: Tue 4/18/2017 1:45:00 PM

To: Johnson, CynthiaN[Johnson.CynthiaN@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:43:46 PM
Subject: Please make a 1-time change to Donna's CD

Hi Cynthia --

Personal Matters / Ex. 6

Thanks!

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 12:36 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: A couple of questions and an FYI

Hi Donna

Personal Matters / Ex. 6

For Corps meeting today - I have a couple of quick things. Is there anything rule-related to touch on? I haven't seen the options paper for the **Deliberative Process / Ex. 5** have you? Also, can you remember when they thought they would hear back from **Deliberative Process / Ex. 5**

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:12 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: A couple of questions and an FYI

Hiya Mindy --

Since you were on the phone when I stuck my head in (twice), I decided it would be less disruptive and more helpful to send you an email with my couple of questions --

-- when is the meeting with Mike this afternoon for the draft run-through Federalism powerpoint? If possible, I'd be very interesting in attending.

-- Are we on with the Corps this afternoon at 2pm?? I don't know of non-WOTUS agenda items, but know you might have some.

Personal Matters / Ex. 6

Personal Matters / Ex. 6

FYI, I'll be sending an agenda for the Wednesday 10am meeting for your consideration shortly. (First am

coordinating with Simma on the preamble).

Thanks for any thoughts you might have!

Donna

-----Original Message-----

From: Eisenberg, Mindy

Sent: Monday, April 17, 2017 11:29 AM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: RE: Federalism powerpoint

Hi Simma,

We're going to be meeting with Mike Shapiro this afternoon to run the presentation past him to get feedback and then plan to share with Sarah and others to see what their comfort level is. They seemed to open the door a little on Wednesday evening, so we'll see.

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

-----Original Message-----

From: Kupchan, Simma

Sent: Monday, April 17, 2017 10:49 AM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>
Subject: RE: Federalism powerpoint

I think the revised version looks good. Thanks for all of your work on this, Damaris and everyone else.

My only question is about the content of slides

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Thanks,

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

-----Original Message-----

From: Christensen, Damaris

Sent: Friday, April 14, 2017 10:09 PM

To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Hewitt, Julie <Hewitt.Julie@epa.gov>

Subject: Federalism powerpoint

Several sharepoint glitches later, the federalism ppt is up to date. I suggest that this group identify any additional edits by early afternoon Monday, especially focusing on the later (new) slides where I lay

Deliberative Process / Ex. 5

By Monday COB we should be ready to forward up, with the understanding that political will want to review the slides before the meeting and the earlier they see them the better.

Here's the link.

Nonresponsive Internal URL/ Ex. 6

Also in the federalism folder shortly will be a draft agenda and a draft run of show. You are welcome to peek at early drafts but I'll send a link around after I've had a chance to touch base with Jake Strickler, who is facilitating, on Monday.

Damaris

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]

Sent: Friday, April 14, 2017 5:05 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Stacey.M.Jensen@usace.army.mil; Cindy Barger <cindy.s.barger.civ@mail.mil>

Subject: Heads up

I'll be sending around a link to review the new content-added federalism PowerPoint in a couple hours.

Personal Matters / Ex. 6

Damaris

Sent from my iPhone

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:43:08 PM
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Hiya Rose –

Yes, I got an out-of-office message. I'm going to see if **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 I think the agenda's **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

BTW, Simma and I are going to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 I'll let you know when we're done.

Donna

From: Kwok, Rose
Sent: Monday, April 17, 2017 12:41 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Personal Matters / Ex. 6, FYI

From: Downing, Donna
Sent: Monday, April 17, 2017 12:39 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Penman, Crystal <Penman.Crystal@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Goodin, John <Goodin.John@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>

Subject: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am

Hi Ann:

Attached please find a draft agenda for Wednesday's 10am leadership meeting on WOTUS-2. The attached reflects review from WD senior management. Please let me know if you have any edits or other suggestions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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Washington, DC 20004

To: Ann Campbell[Campbell.Ann@epa.gov]
Cc: Penman, Crystal[Penman.Crystal@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Goodin, John[Goodin.John@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Karyn Wendelowski[wendelowski.karyn@epa.gov]; Nandi, Romell[Nandi.Romell@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:39:03 PM
Subject: For review & possible posting: Draft agenda for Wednesday 4/19 WOTUS-2 meeting at 10am
Agenda -- WOTUS 19 April 2017 v2.docx

Hi Ann:

Attached please find a draft agenda for Wednesday's 10am leadership meeting on WOTUS-2. The attached reflects review from WD senior management. Please let me know if you have any edits or other suggestions. Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:33:37 PM
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

HA! You're fast.

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 12:30 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

With attachment

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:21 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Hi Mindy --

Attached is a draft agenda for Wednesday's 10am leadership meeting. Essentially, the agenda provides for **Deliberative Process / Ex. 5** The goal would be **Deliberative Process / Ex. 5**

Next week an important focus should be **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please let me know if you have suggested edits or redirections. Thanks!

Donna

Your message is ready to be sent with the following file or link attachments:

Agenda -- WOTUS 19 April 2017 v1.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:33:23 PM
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Was there an attachment with edits to the agenda?

Sounds fine re: next week's meeting -- **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Also, just got an invitation to today's Federalism run-through from Mike.

Donna

-----Original Message-----

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 12:29 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: RE: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Hi Donna,
Here are a few edits to the draft agenda. Thanks!

For next week's meeting, let's **Deliberative Process / Ex. 5** I'm hoping that they
may want us to focus on **Deliberative Process / Ex. 5**

Thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

-----Original Message-----

From: Downing, Donna
Sent: Monday, April 17, 2017 12:21 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx

Hi Mindy --

Attached is a draft agenda for Wednesday's 10am leadership meeting. Essentially, the agenda provides
for **Deliberative Process / Ex. 5** The
goal would be **Deliberative Process / Ex. 5**

Next week an important focus should be **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please let me know if you have suggested edits or redirections. Thanks!

Donna

Your message is ready to be sent with the following file or link attachments:

Agenda -- WOTUS 19 April 2017 v1.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Downing, Donna
Location: 3219A WJCE
Importance: Normal
Subject: Accepted: FW: Pre-brief WOTUS Federalism Meeting
Start Date/Time: Mon 4/17/2017 7:00:00 PM
End Date/Time: Mon 4/17/2017 7:30:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Rose Kwok[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov];
McDavit, Michael W.[Mcdavit.Michael@epa.gov]
From: Downing, Donna
Sent: Mon 4/17/2017 4:21:27 PM
Subject: Emailing: draft Agenda -- WOTUS 19 April 2017 v1.docx
Agenda -- WOTUS 19 April 2017 v1.docx

Hi Mindy --

Attached is a draft agenda for Wednesday's 10am leadership meeting. Essentially, the agenda provides for **Deliberative Process / Ex. 5**. The goal would be **Deliberative Process / Ex. 5**.

Next week an important focus should be **Deliberative Process / Ex. 5**.

Deliberative Process / Ex. 5

Please let me know if you have suggested edits or redirections. Thanks!

Donna

Your message is ready to be sent with the following file or link attachments:

Agenda -- WOTUS 19 April 2017 v1.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Downing, Donna
Location: HQ-Room-WJCE-1117A-50pp
Importance: Normal
Subject: Accepted: WOTUS Federalism Meeting
Start Date/Time: Wed 4/19/2017 6:00:00 PM
End Date/Time: Wed 4/19/2017 8:00:00 PM

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Fri 4/14/2017 6:13:07 PM
Subject: RE: WOTUS-2 draft merials for WOTUS Hot Issue Call?

I like all your edits.

Donna

From: Eisenberg, Mindy
Sent: Friday, April 14, 2017 1:10 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: WOTUS-2 draft merials for WOTUS Hot Issue Call?

With attachment

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Downing, Donna
Sent: Friday, April 14, 2017 11:54 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS-2 draft merials for WOTUS Hot Issue Call?

Here's a somewhat lame draft version of a background paper. I'm not sure what questions we might ask the WDDs ...

I'll bring a hardcopy to you as well, in case that's your preferred editing method.

Donna

From: Balasa, Kate
Sent: Friday, April 14, 2017 9:34 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Reid, Darren <Reid.Darren@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>
Subject: Materials for WOTUS Hot Issue Call?

Good morning, Mindy and Donna,

Per John's request I scheduled the WOTUS Hot Issue call with the WDDs for April 20 at 2:30pm central time. I wanted to touch base to see if you were planning on providing any materials for the call. If so, I just wanted to request that you get them to me by **COB Monday** to provide time for folks to review prior to the call. Typically, a summary document similar to the attached document Tom Wall prepared for the measure streamlining discussion is drafted for the purpose of framing the discussion. It would be helpful if you all would provide something similar.

Thanks so much and have a nice weekend,

Kate Balasa

Lead Region Coordinator - Office of Water

U.S. EPA - Region 5

77 W. Jackson Blvd. (W-15J)

Chicago, IL 60604-3590

(312) 886-6027

From: Goodin, John

Sent: Monday, April 03, 2017 8:18 AM

To: Balasa, Kate <balasa.kate@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>

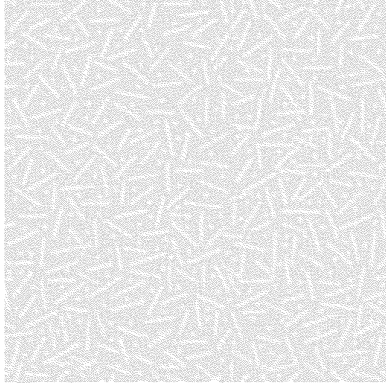
Subject: WOTUS for WDD Call

Morning, Kate—I would like to set up a call with the WDDs (or take advantage of any already scheduled this month) to discuss the waters of the US rulemaking and the current process. I'm guessing that 45 minutes would suffice. Donna Downing in the Wetlands Division has set up a call with Regional staff and others for this Thursday. Not sure what the usual lead time is for your group, but this Thursday would be great as well for the WDDs. Otherwise suggest the week of the 17th, as many of us will be out the week of the 10th. Would you take the lead in organizing a date and time?

Thanks!

John

To: Johnson, Terri[Johnson.Terri@epa.gov]
From: Downing, Donna
Sent: Thur 4/13/2017 9:53:11 PM
Subject: RE: talking points for Benita
[draft Basic Talking Points.docx](#)



Hi Terri:

Yeah, we're pretty busy but I did remember your request. I hadn't sent any TPs because the WOTUS rule situation is

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 With that warning, attached please find the current set of talking points. Let's touch base closer to Rally time to make sure the TPs reflect the then-latest public position.

Thanks!

Donna

From: Johnson, Terri
Sent: Thursday, April 13, 2017 4:23 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: FW: talking points for Benita

I know you must be crazy busy but if you have a chance to forward the talking points

you mentioned for the CWA rule it would help me as I develop talking points for Benita and John

I need to get the first draft off to Surabhi Shah for review then they go to Benita for the briefing.

From: Johnson, Terri
Sent: Wednesday, April 05, 2017 12:55 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: talking points for Benita

Rally is May 8th – 11th and she will be talking to NGOs, our regions and other Feds.

Thanks Donna

Terri Johnson

EPA- Office of Water

Urban Waters Program

202-564-8296

To: Martinez, Maria[Martinez.Maria@epa.gov]
From: Downing, Donna
Sent: Thur 4/13/2017 9:35:11 PM
Subject: RE: WOTUS - 2 Workgroup

Will do. The call for a **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Glad both Alison and you are members!

How's life in Region 6? Busy here, as you can imagine!

Donna

From: Martinez, Maria
Sent: Thursday, April 13, 2017 5:34 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: WOTUS - 2 Workgroup

Donna,

Region 6 would like to continue our participation in the WOTUS-2 workgroup. Alison Fontenot would be the staff level person representing the Region. Please include me as the manager level representative.

Thanks,

Maria



Maria L. Martinez

Chief, Wetlands Section Chief

Region 6

U.S. Environmental Protection Agency

1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

214-665-2230

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Downing, Donna
Sent: Wed 4/12/2017 1:06:55 PM
Subject: FW: Today's WOTUS meeting

We've got some key topics today ... do we want to reschedule if Sara or others in our target audience aren't attending? There may be benefits of discussing anyway (if, for example, Doug Lamont is attending). Just a thought.

Donna

-----Original Message-----

From: Campbell, Ann
Sent: Wednesday, April 12, 2017 9:04 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>
Subject: Re: Today's WOTUS meeting

Of course! Also it looks like Samantha will not make it to today's meeting.

> On Apr 12, 2017, at 9:03 AM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

>

> Thanks Ann

>

> Mindy Eisenberg

> Acting Director, Wetlands Division

> Office of Wetlands, Oceans and Watersheds U.S. Environmental

> Protection Agency

> 1200 Pennsylvania Ave., NW, mailcode 4502T Washington, DC 20460

> (202) 566-1290

> eisenberg.mindy@epa.gov

>

> -----Original Message-----

> From: Campbell, Ann

> Sent: Wednesday, April 12, 2017 9:03 AM

> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna

> <Downing.Donna@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>

> Cc: Wall, Tom <Wall.Tom@epa.gov>

> Subject: Today's WOTUS meeting

>

> Folks, Benita is out [Personal Matters / Ex. 6] and Mike is at Mt Weather. He thinks he'll be back for the WOTUS meeting but it's iffy. I just wanted to give you the heads up.

To: Kwok, Rose[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Wed 4/12/2017 1:00:57 PM
Subject: RE: Waters of the US on ADP tracker

Deliberative Process / Ex. 5

Donna


From: Kwok, Rose
Sent: Tuesday, April 11, 2017 9:40 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Waters of the US on ADP tracker

Donna – **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Cantilli, Robert
Sent: Tuesday, April 11, 2017 3:01 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Waters of the US on ADP tracker

Hi Rose/Donna: Can either of you please let me know what the scope of the activity looks like and what kind of ORD support you might require going forward? Reading the ADP tracker gives me the impression **Deliberative Process / Ex. 5** Thanks, Bob.

OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."
Action Document Link->

Deliberative Process / Ex. 5

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Wed 4/12/2017 12:08:11 AM
Subject: Re: Docket Creation

Thanks, Rose!

Sent from my iPhone

On Apr 11, 2017, at 7:42 PM, Kwok, Rose <Kwok.Rose@epa.gov> wrote:

Great, I'll use this (the abstract in ADP Tracker) as the description:

Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Tuesday, April 11, 2017 7:42 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: Docket Creation

Looks good! At least people will know what we're doing....

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Kwok, Rose

Sent: Tuesday, April 11, 2017 7:40 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: Docket Creation

Hi All,

I'm filling out the docket creation form, and wanted to confirm that we are okay with this name for the docket (will match the ADP tracker (

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 ;

Deliberative Process / Ex. 5

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Tue 4/11/2017 8:11:52 PM
Subject: FW: Waters of the US on ADP tracker

I'm getting a lot of questions about the just-announced **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Sigh. I guess I'll add the issue to the agenda for this Thursday's informal Regional rule workgroup... Double sigh.

Donna

From: Downing, Donna
Sent: Tuesday, April 11, 2017 4:09 PM
To: Cantilli, Robert <Cantilli.Robert@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: Waters of the US on ADP tracker

Hi Bob:

The activity isn't likely to **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 Also, FYI we're waiting word from the Administrator's Office as to whether and how **Deliberative Process / Ex. 5**. I've asked OP for more information. Thanks for asking.

Donna

From: Cantilli, Robert
Sent: Tuesday, April 11, 2017 3:01 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Waters of the US on ADP tracker

Hi Rose/Donna: Can either of you please let me know what the scope of the activity looks like and what kind of ORD support you might require going forward? Reading the ADP tracker gives me the impression **Deliberative Process / Ex. 5** Thanks, Bob.

OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."
Action Document Link->

Deliberative Process / Ex. 5

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 4/11/2017 8:00:49 PM
Subject: RE: federalism invites

Hmmm. I'm pretty sure **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 ?

Thanks for chairing the 1pm interagency meeting. It felt productive.

Donna

From: Christensen, Damaris
Sent: Tuesday, April 11, 2017 3:44 PM
To: Hanson, Andrew <Hanson.Andrew@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>
Subject: RE: federalism invites

Thanks, Drew, very helpful. I'll run a FAQ past you soonish.

I'm surprised, I was told **Deliberative Process / Ex. 5** But I'm surprised by a lot nowadays. ☺

From: Hanson, Andrew
Sent: Tuesday, April 11, 2017 3:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Bowles, Jack <Bowles.Jack@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>
Subject: RE: federalism invites

Hey

You can start by referring to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I don't think you'll need to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris

Sent: Tuesday, April 11, 2017 3:23 PM

To: Hanson, Andrew <Hanson.Andrew@epa.gov>

Subject: federalism invites

Hey Drew,

I hear from Donna at ASWM that we might need to have a response or Q&A related to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Can you help?

Damaris

To: Melgin, Wendy[melgin.wendy@epa.gov]
From: Downing, Donna
Sent: Tue 4/11/2017 6:15:30 PM
Subject: Re: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Thanks, Wendy!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 11, 2017, at 2:08 PM, Melgin, Wendy <melgin.wendy@epa.gov> wrote:

This might help with an explanation in case you get other regions calling. Jori is one of the people who keeps up with HQ measures, workgroups, etc. I confirmed that we were part of this workgroup and she doesn't need to ask anyone else!

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 1:04 PM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Well, the message goes out with what is called a Tiering List. Regions can provide comments on any of the Tiering issues [which we typically don't do because HQ is the lead]. But it also always says that

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Downing, Donna
Sent: Tue 4/11/2017 5:08:45 PM
Subject: Fwd: DUE 4/17: WWB Participation on Waters of the US Workgroup?

I'll let you know what I find out.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

DMD

Sent from my iPhone

Begin forwarded message:

From: "Downing, Donna" <Downing.Donna@epa.gov>
Date: April 11, 2017 at 12:39:46 PM EDT
To: "Nickerson, William" <Nickerson.William@epa.gov>
Cc: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>
Subject: Fwd: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Deliberative Process / Ex. 5

Thanks, Bill.

Donna

Sent from my iPhone

Begin forwarded message:

From: "Melgin, Wendy" <melgin.wendy@epa.gov>
Date: April 11, 2017 at 12:21:59 PM EDT

To: "Downing, Donna" <Downing.Donna@epa.gov>
Subject: FW: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Donna, did you know this message is going out about workgroup members?

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 11:18 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Looking in the database that tracks these things, it is not showing any workgroup members....so, I'll provide both of your names just in case.

From: Melgin, Wendy
Sent: Tuesday, April 11, 2017 11:16 AM
To: Taylor, Jori <taylor.jori@epa.gov>; Swenson, Peter <swenson.peter@epa.gov>; Gluckman, Matthew <gluckman.matthew@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Andrea Schaller and I are on the workgroup. They know all about us.

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 10:20 AM
To: Swenson, Peter <swenson.peter@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Gluckman, Matthew <gluckman.matthew@epa.gov>
Subject: DUE 4/17: WWB Participation on Waters of the US Workgroup?

OW is forming the following workgroup. If WWB has any interest in participating on the workgroup, please forward the name of the participant to me by 4/17.

OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."

Deliberative Process / Ex. 5

To: Melgin, Wendy[melgin.wendy@epa.gov]
From: Downing, Donna
Sent: Tue 4/11/2017 5:08:42 PM
Subject: Re: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Deliberative Process / Ex. 5 Stay tuned.

Donn

Sent from my iPhone

On Apr 11, 2017, at 12:22 PM, Melgin, Wendy <melgin.wendy@epa.gov> wrote:

Donna, did you know this message is going out about workgroup members?

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 11:18 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Looking in the database that tracks these things, it is not showing any workgroup members....so, I'll provide both of your names just in case.

From: Melgin, Wendy
Sent: Tuesday, April 11, 2017 11:16 AM
To: Taylor, Jori <taylor.jori@epa.gov>; Swenson, Peter <swenson.peter@epa.gov>; Gluckman, Matthew <gluckman.matthew@epa.gov>
Subject: RE: DUE 4/17: WWB Participation on Waters of the US Workgroup?

Andrea Schaller and I are on the workgroup. They know all about us.

From: Taylor, Jori
Sent: Tuesday, April 11, 2017 10:20 AM
To: Swenson, Peter <swenson.peter@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Gluckman, Matthew <gluckman.matthew@epa.gov>

Subject: DUE 4/17: WWB Participation on Waters of the US Workgroup?

OW is forming the following workgroup. If WWB has any interest in participating on the workgroup, please forward the name of the participant to me by 4/17.

OW - SAN 6027: (Tier '1') Definition of "Waters of the U.S."

Deliberative Process / Ex. 5

From: Downing, Donna
Location: 3233 WJCE Call in **Nonresponsive Conference Code/ Ex. 6**
Importance: Normal
Subject: Declined: WOTUS Schedule
Start Date/Time: Wed 4/12/2017 9:00:00 PM
End Date/Time: Wed 4/12/2017 9:45:00 PM

Will be presenting at ASWM conference in Shepherdstown Wednesday until 5pm. But plan to catch up on Wednesday's discussions about schedule by talking with Mindy on Thursday.

Donna

From: Downing, Donna
Importance: Normal
Subject: Declined: help w/WOTUS
Start Date/Time: Wed 4/12/2017 5:00:00 PM
End Date/Time: Wed 4/12/2017 5:30:00 PM

Will be presenting at the ASWM conference in Shepherdstown, so won't be able to attend.

Donna

To: Rose Kwok[Kwok.Rose@epa.gov]
From: Downing, Donna
Sent: Mon 4/10/2017 5:56:33 PM
Subject: FW: Format of proposed rule text?
Jensen Step 1 Rule Drafts.docx

Think this is the latest...

DMD

-----Original Message-----

From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Thursday, April 06, 2017 8:29 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Format of proposed rule text?

A few minor edits. Thank you, Simma!

-----Original Message-----

From: Kupchan, Simma [mailto:Kupchan.Simma@epa.gov]
Sent: Wednesday, April 05, 2017 5:23 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: [Non-DoD Source] RE: Format of proposed rule text?

Thanks to all for your input. Attached is a draft strikethrough rule text. I welcome your review.

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

From: Downing, Donna
Sent: Wednesday, April 05, 2017 3:15 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Stacey Jensen <Stacey.M.Jensen@usace.army.mil>
Subject: RE: Format of proposed rule text?

I concur with

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

Deliberative Process / attorney client Ex. 5

From: Christensen, Damaris
Sent: Wednesday, April 05, 2017 2:40 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov <mailto:Kupchan.Simma@epa.gov> >; Wehling, Carrie <Wehling.Carrie@epa.gov <mailto:Wehling.Carrie@epa.gov> >; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov <mailto:Eisenberg.Mindy@epa.gov> >; Downing, Donna <Downing.Donna@epa.gov <mailto:Downing.Donna@epa.gov> >; Stacey Jensen <Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> >
Subject: RE: Format of proposed rule text?

I think **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

Might be useful to take, say, **Deliberative Process / attorney client Ex. 5**

From: Kupchan, Simma
Sent: Wednesday, April 05, 2017 2:36 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov <mailto:Wehling.Carrie@epa.gov> >; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov <mailto:Eisenberg.Mindy@epa.gov> >; Downing, Donna <Downing.Donna@epa.gov <mailto:Downing.Donna@epa.gov> >; Christensen, Damaris <Christensen.Damaris@epa.gov <mailto:Christensen.Damaris@epa.gov> >; Stacey Jensen <Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> >
Subject: Format of proposed rule text?

All,

In "drafting" the proposed rule text for next week's meeting, do we just want **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5?

Or do we want **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5? I assume we **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

I wanted to nail down today as I will be out of the office Friday - Wednesday.

Thanks,

Simma Kupchan

Water Law Office

US EPA Office of General Counsel

William Jefferson Clinton Building North Room 7426Q

(p) 202-564-3105

To: David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Hewitt, Julie[Hewitt.Julie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Doley, Todd[Doley.Todd@epa.gov]; Bahk, Benjamin[Bahk.Benjamin@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Ludwig-Monty, Sarah[ludwig-monty.sarah@epa.gov]; Speir, Jeffrey[speir.jeffrey@epa.gov]; Flannery-Keith, Erin[Flannery-Keith.Erin@epa.gov]; Wesson, Dolores[Wesson.Dolores@epa.gov]; DCRoomWest7129/DC-CCW-OWOW[DCRoomWest7129@epa.gov]; Jensen, Stacey M CIV USARMY HQDA (US[Stacey.M.Jensen@usace.army.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US[Jennifer.A.Moyer@usace.army.mil]; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US[John.M.Wilson@usace.army.mil]; Barger, Cindy S CIV USARMY HQDA ASA CW (US[cindy.s.barger.civ@mail.mil]

From: Downing, Donna

Sent: Mon 4/10/2017 5:43:49 PM

Subject: For review and discussion at Tuesday's interagency staff WOTUS meeting: first draft sentence outline of Step 1 Preamble

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi folks:

Attached is a Sharepoint link to a draft sentence outline of the Step 1 preamble. Deliberative Process / Ex. 5

| | | |
|-------------------------------------|---|-------------------------------------|
| Deliberative Process / Ex. 5 | | |
| Deliberative Process / Ex. 5 | I suspect we | Deliberative Process / Ex. 5 |
| Deliberative Process / Ex. 5 | | |
| Deliberative Process / Ex. 5 | ? Other preamble-related topics for Tuesday's interagency staff meeting include | |
| Deliberative Process / Ex. 5 | | |
| Deliberative Process / Ex. 5 | | |

I'll be in Shepherdstown at the ASWM meeting on Tuesday and Wednesday, but hope to call in for both meetings.

Thanks!

Nonresponsive Internal URL/ Ex. 6

(PS if the link doesn't work, please contact Rose since she is a Sharepoint guru and I'm going to be traveling to West Virginia later this afternoon)

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Lapp, Jeffrey[lapp.jeffrey@epa.gov]
From: Downing, Donna
Sent: Fri 4/7/2017 4:36:40 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

Donna

From: Lapp, Jeffrey
Sent: Friday, April 07, 2017 12:34 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: Recurring WOTUS Regional/HQ Staff workgroup meeting

Personal Matters / Ex. 6

Sent from my iPhone

On Apr 7, 2017, at 12:31 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Personal Matters / Ex. 6

Donna

-----Original Appointment-----

From: Lapp, Jeffrey
Sent: Friday, April 07, 2017 12:31 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

From: Downing, Donna
Location: 3233 WJCE (OW conference room) unless otherwise indicated; telecom in body of invitation
Importance: Normal
Subject: Responding to CWR-related 10am meeting requests
Start Date/Time: Wed 4/12/2017 3:00:00 PM
End Date/Time: Wed 4/12/2017 4:00:00 PM

ROOM WILL BE 3233 WJCE (same room as the 10am leadership meeting), unless I've sent a note otherwise for those weeks it's not available.

Telecom info is: **Nonresponsive Conference Code/ Ex. 6**

The interagency WOTUS-2 staff-level meeting participants agreed we should meet after the leadership meeting to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please note that this meeting isn't an invitation to the preceding leadership meeting ... although we'll try to take over their room afterwards if it's available.

To: Lapp, Jeffrey[lapp.jeffrey@epa.gov]
From: Downing, Donna
Sent: Fri 4/7/2017 4:31:57 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Let the party planning begin! Jeff's coming!

Donna

-----Original Appointment-----

From: Lapp, Jeffrey
Sent: Friday, April 07, 2017 12:31 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW

To: Szalay, Endre[Szalay.Endre@epa.gov]
From: Downing, Donna
Sent: Fri 4/7/2017 4:31:24 PM
Subject: RE: Recurring WOTUS Regional/HQ Staff workgroup meeting

Thanks, Endre. I added Ashley Palomaki to the invitee list and kept you on in case you wanted to lurk.

Donna

-----Original Appointment-----

From: Szalay, Endre
Sent: Friday, April 07, 2017 12:29 PM
To: Downing, Donna
Subject: Accepted: Recurring WOTUS Regional/HQ Staff workgroup meeting
When: Thursday, June 01, 2017 11:30 AM-12:30 PM (UTC-08:00) Pacific Time (US & Canada).
Where: DCRoomWest7129/DC-CCW-OWOW